Draft Legislation to Amend the Excise Tax Act (GST) and Related Statutes

Explanatory Notes

Issued by
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These explanatory notes are provided to assist in an understanding of the proposed draft amendments to the *Excise Tax Act* and related Acts. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Cette publication est également offerte en français.

PREFACE

The draft legislation to which these explanatory notes relate contains proposed amendments to the *Excise Tax Act* and related statutes. These amendments are intended to implement the sales tax measures announced on October 17, 1990, December 18, 1990, March 27, 1991, May 15, 1991, June 24, 1991, November 5, 1991, March 10, 1992 and September 14, 1992, as well as measures announced by the Minister of State for Small Business and Tourism on December 18, 1990 and May 15, 1991 and by the Minister of National Revenue on April 27, 1992. In addition, the draft legislation contains a number of technical amendments that clarify and, in some cases, correct the application of the *Excise Tax Act* and related statutes.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

It should be noted that amendments that are proposed to come into force retroactively on December 17, 1990, the day on which the legislation that enacted the Goods and Services Tax received Royal Assent, are described in these notes as having effect as of January 1, 1991, the day on which the tax was implemented. As well, references in these notes to "ANNOUNCEMENT DATE" should be read as references to the date of release of this document.

The Honourable Don Mazankowski
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Part I: Excise Tax Act

Clause 1

Delegation of Powers

ETA
59(2)

Subsection 59(2) provides that the Minister of National Revenue may authorize a designated officer, or an officer of a designated class of officers, to exercise powers or perform duties of the Minister for purposes of the *Excise Tax Act* other than Part IX of the Act. This amendment removes the requirement that the authorization be made by regulation. Subsection 275(3) provides a parallel authority for purposes of Part IX of the Act.

Clause 2

Application of Anti-Avoidance Rule

ETA
68.2

Section 68.2 provides for a recovery of the federal sales tax (FST) on goods sold to a person who otherwise would be entitled to acquire those goods on an FST-exempt basis. This amendment provides that the general anti-avoidance rule set out in section 274 will apply to transactions that occurred between December 17, 1990 and January 1, 1991 and to which section 68.2 applies.

This amendment is pursuant to the December 18, 1990 press release and is effective as of that date.

Clause 3

Post-1990 Adjustments to FST Liability

ETA
70.1

There are provisions under the *Excise Tax Act*, the *Customs Act* and the *Customs Tariff* that permit the recovery of FST previously paid in specified circumstances – for example, when goods are exported. Generally, this amendment will only allow the refund or drawback of FST under these Acts where the event giving rise to the refund or drawback occurred before 1991. As was announced in the press release of December 18, 1990, the limitation on drawbacks and refunds will not apply to refunds for tax paid in error or bad debts under section 68 and 68.21 of the *Excise Tax Act*, for which adjustments will continue to be available to licensees in respect of pre-1991 sales.

In addition, the limitation on drawbacks and refunds will not apply in respect of:

- Price adjustments after 1990

  – FST-paid goods that were sold under an agreement in writing where the sale price is subsequently adjusted within two years after the vendor was required to pay the FST;

- Exports after 1990

  – FST-paid goods exported after 1990 where the exporter had possession of the goods at the end of 1990 and was not a GST registrant on January 1, 1991;

  – FST-paid goods exported after 1990 after having been imported where the exporter had possession of the goods at the end of 1990, the goods were found to be defective or not as ordered or suffered damage before release and where no FST inventory rebate was claimable;

- Goods sold after 1990

  – FST-paid goods referred to in section 68.17, 68.2 or 70 where ownership or possession of the goods was transferred to the purchaser or other transferee before 1991;

- Goods for use by a province

  – FST-paid goods for use by a province where the province acquired ownership or possession of the goods before 1991;

  – FST-paid goods for use by a province that are supplied or transferred to the province by a person in the course of performing services under an agreement in writing with the province where the person had possession of the goods in

Canada at the end of 1990 and was not entitled to receive an FST inventory rebate in respect of the goods;

- Water and sewerage system goods acquired after 1990

  – FST-paid goods, described in section 68.23, acquired for a water and sewerage system where ownership or possession of the goods were transferred before 1991 and no FST inventory rebate was provided;

- Goods acquired by certain organizations after 1990

  – FST-paid goods purchased by an organization that is described in any of sections 68.24 to 68.27 (for example, certified institutions) for the organization's use where the organization acquired ownership or possession of the goods before 1991;

  – FST-paid goods acquired before 1991 by a person who was not entitled to claim an FST inventory rebate on the goods, where the goods were acquired for a purpose that would entitle another organization to a refund of tax under any of sections 68.24 to 68.27.

- Other goods acquired after 1990

  – goods for which refunds of tax are provided under any of sections 68.28 to 68.3 (for example, goods for use by a small manufacturer and motor fuel purchased by diplomats) or section 70 (drawbacks on certain goods) or any other enactment, where ownership or possession of the goods was transferred before 1991.

This amendment is effective January 1, 1991.

Clause 4

Interest on Inventory Rebate Overpayment

ETA
81.39(1)(b)

Interest is payable to the recipient of an FST inventory rebate where the rebate is not paid within 20 days after the application for the rebate is filed. This amendment ensures that, if the amount paid as a rebate exceeds the amount to which the recipient was entitled, the recipient is required to repay any interest in respect of the excess amount.

This amendment is effective January 1, 1991.

Clause 5

Transitional Rule - Instalment Contracts

ETA
118

Section 118 sets out transitional rules relating to the application of the FST to transactions straddling January 1, 1991 when the GST was implemented.

Subclause 5(1)

ETA
118(1)(b) of the French version

Paragraph 118(1)(b) provides that the FST does not apply to imported goods that have not been released from Customs or accounted for under the *Customs Act* before 1991. Such goods would, instead, be subject to the GST. Paragraph 118(1)(b) of the English version of the Act refers to both a detailed accounting and an interim accounting for goods under the *Customs Act*. The same paragraph in the French version of the Act is amended, as of January 1, 1991, to ensure that it is consistent with the English version by referring to both of these types of accounting.

Subclause 5(2)

ETA
118(5)

Subsection 118(5) is amended to clarify that any instalment payments payable after November 1990 under a contract that was entered into after October 1989 and under which goods have been delivered or title has passed to the purchaser before 1991, are deemed to have become payable in 1990. As a result, they are subject to FST rather than GST.

This amendment is pursuant to the December 18, 1990 press release and is effective as of that date.

Subclause 5(3)

Conditionally FST-Exempt Goods Diverted After 1990

ETA
118(6.1)

The Act currently provides that when certain goods acquired on an FST-exempt basis are diverted to a taxable use, sale or lease, FST becomes payable at that time. Where the diversion occurs after 1990, the transaction could also become subject to GST. To remove the potential for double taxation, new subsection 118(6.1) will provide that FST is not payable where the diversion occurs after 1990.

This amendment is effective January 1, 1991.

Clause 6

FST Inventory Rebate

ETA
120

Section 120 provides for a rebate to vendors who held FST-paid goods in inventory for resale at the beginning of January 1, 1991.

Subclause 6(1)

ETA
120(1) Definition "inventory"

The definition "inventory" in subsection 120(1) is amended to confirm that, for goods to qualify for the FST inventory rebate, the goods must have been held for sale, lease or rental, within the ordinary meaning of those expressions. The reference to "taxable supply" is deleted and replaced with references to sales, leases or rentals in the course of a "commercial activity", also defined in subsection 120(1)). The amendment also confirms that the

FST inventory rebate does not apply to such things as packaging material or incidental supplies that are not sold separately for a price.

This amendment is effective January 1, 1991.

Subclause 6(2)

ETA
120(1) Definition "tax-paid goods"

Pursuant to the press release of December 18, 1990, the definition "tax-paid goods" in subsection 120(1) is amended to clarify that for goods to qualify for the FST inventory rebate, the FST must have been imposed on the price or volume sold of those particular goods.

This amendment is effective January 1, 1991.

Subclause 6(3)

ETA
120(1) Definition "commercial activity"

The definition "commercial activity" is added to subsection 120(1) for purposes of the definition "inventory" in that subsection.

This amendment is effective January 1, 1991.

Subclause 6(4)

Goods not Expected to be Sold

ETA
120(2.1)

New subsection 120(2.1) clarifies that the FST inventory rebate is not available for that portion of a vendor's inventory that the vendor could reasonably have expected to use or consume in providing a service, (e.g., shampoo used by a hairdresser). This would also exclude that portion of the inventory of a business that could reasonably have been expected to be used in honouring warranties given by the business.

This amendment is effective January 1, 1991.

Subclause 6(5)

ETA
120(3.1) to (3.3)

New subsection 120(3.1) denies the FST inventory rebate for exclusive products of a direct seller (as defined in new section 178.1) that are, on January 1, 1991, in the inventory of an independent sales contractor of the direct seller who is operating under the alternate collection method set out under new section 178.3. Under that method of accounting, neither the independent sales contractor nor the direct seller are required to remit GST on any subsequent sale of that inventory.

Subsection 120(3.2) parallels the rules set out in subsection 120(3.1) for cases where the direct seller is, on January 1, 1991, operating under the alternate collection method set out under new section 178.4.

Section 178.1, which outlines the rules for the alternate collection method for direct sellers, defines a number of terms that are used in subsections 120(3.1) and (3.2). Subsection 120(3.3) provides that these terms, for purposes of subsections 120(3.1) and (3.2), have the meaning assigned to them by new section 178.1.

This amendment is pursuant to the December 18, 1990 press release and is effective January 1, 1991.

Subclause 6(6)

ETA
120(6)

The amendment to subsection 120(6) ensures that all of the procedural rules in Part VI and VII of the Act apply to claims for the FST inventory rebate by treating these claims as if they were made under section 68 of Part VI.

Clause 7

FST New Housing Rebate

ETA
121

Section 121 provides for a rebate in respect of certain new housing that was under construction before 1991 and therefore has an element of FST in its costs and would be subject to GST when first occupied, sold or leased after 1990.

Subclauses 7(1) and (2)

ETA
Definition "specified residential complex" in subsection 121(1)

Paragraph (a) of the definition "specified residential complex" is amended, effective January 1, 1991, to exclude duplexes. This amendment is consequential to the inclusion of duplexes in the definition "specified single unit residential complex" in subsection 121(1).

The FST New Housing Rebate is provided only in respect of "new" housing – i.e., complexes that were not occupied as places of residence before 1991. Accordingly, paragraph (a) of the definition "specified residential complex" excludes used housing by referring to complexes to which section 191, which generally applies when a residential complex is first occupied as a residence, applied before 1991 (for this purpose section 191 is deemed to have been in force at all times). However, section 191 would not have applied before 1991 to residences referred to in subsections 191(6) and (7), even if they were occupied before 1991. Therefore, to exclude these used residences, a specific reference to those subsections is added in the definition "specified residential complex".

Paragraph (b) of the definition "specified residential complex" is amended, effective January 1, 1991, to clarify that the condominium unit referred to in that definition is a "residential condominium unit" to which neither subsection 191(1) nor (2) applied before 1991.

Subclause 7(3)

ETA
Definition "specified single unit residential complex" in subsection 121(1)

The definition "specified single unit residential complex" is dependent on the definition "residential complex" in subsection 123(1). The definition "residential complex" in subsection 123(1) is being amended to include floating homes as newly defined in that subsection.

As in the case of mobile homes, floating homes are not eligible for the FST New Housing Rebate. To achieve this result, this amendment excludes floating homes from the definition "specified single unit residential complex."

This amendment is effective January 1, 1991.

The definition "specified single unit residential complex" is broadened to include complexes that contain not more than two residential units. As a result, a duplex is treated as a "single unit residential complex" and not as a "multiple unit residential complex" for purposes of the FST New Housing Rebate.

This amendment is pursuant to the press release of March 27, 1991 and is effective January 1, 1991.

Subclause 7(4)

ETA
121(2) to (4)

Subsection 121(2) Rebate for Specified Single Unit Residential Complex

Subsection 121(2) is amended to extend the deadline regarding the FST New Housing Rebate for "specified single unit residential complexes."

The February 15, 1991 deadline for the 2/3 rebate is extended to March 31, 1991. Thus, 2/3 of the estimated federal sales tax may be claimed by individuals purchasing a home or builders renting out a home, provided the home is substantially completed and possession is transferred before April 1991.

The March 31, 1991 deadline for the 1/3 rebate is extended to June 30, 1991. As a result, where a "specified single unit residential complex" is substantially completed and possession is transferred before July 1991, individuals purchasing the home or builders renting out the home may claim a rebate of 1/3 of the estimated federal sales tax.

Subsection 121(2) also introduces a further extension of the 1/3 rebate to homes where possession of the home is transferred after June 1991. Under this provision, individuals purchasing a home and builders renting out a home may claim the 1/3 rebate provided the home is substantially completed before 1991 and possession is transferred before 1995.

These amendments, which are effective January 1, 1991, give effect to the press releases of December 18, 1990, June 24, 1991, November 5, 1991 and March 10, 1992.

Subsection 121(2.1) Liability of the builder

The extended 1/3 rebate for homes substantially completed prior to 1991 and possession of which is transferred prior to 1995 is payable to the builder who rents out the home or to an individual who purchases the home. In order to receive the rebate, the individual who purchases the home must provide evidence that the home was substantially completed prior to 1991 – evidence that, in most cases, can be supplied only by the builder. New subsection 121(2.1) imposes a liability on the builder to repay the rebate that the government has paid to a purchaser in circumstances where the builder gave incorrect information as to the degree of completion of the home and the purchaser would not otherwise have been entitled to the rebate.

New subsection 121(2.1) is effective January 1, 1991.

Subsection 121(3) Rebate for Specified Residential Complex

Subsection 121(3) provides a rebate to a builder of a specified residential complex. The amount of the rebate is determined by reference to the degree of completion of the complex on January 1, 1991. For greater certainty, subsection 121(3) is amended to clarify that it is the degree of completion of the physical construction or renovation that is to be taken into consideration in determining the rebate. This amendment is effective January 1, 1991.

Subsection 121(3) is also amended to explicitly exclude student residences constructed by universities, public colleges and school authorities since these institutions are entitled to a rebate under section 68.26 of Part VII of the Act for the FST paid in respect of the residences. Further, these institutions are, pursuant to subsection 191(6), exempted from the self-supply rules of section 191 so that no GST applies to the new residences at the time they are occupied. This amendment is effective January 1, 1991 but does not apply to any application filed under subsection 121(4) on or before ANNOUNCEMENT DATE in respect of residences that were not occupied before 1991.

Subsection 121(4) Application for Rebate

The amendment to subsection 121(4) clarifies that only one rebate is payable in respect of a particular complex. This amendment is pursuant to the press release of December 18, 1990 and is effective January 1, 1991.

Subsection 121(4.1) Rebate Based on Consideration

New subsection 121(4.1) ensures that where an individual purchaser or a builder claims a rebate based on the consideration for the supply of the complex, the rebate is payable only if the claim for the rebate is made after the tax in respect of the supply of the complex became payable.

This amendment is pursuant to the press release of December 18, 1990 and is effective January 1, 1991.

Subclause 7(5)

ETA
121(6) and 121.1

Subsection 121(6) Application of Parts VI and VII

The amendment to subsection 121(6) ensures that all of the relevant administrative provisions contained in Parts VI and VII of the Act apply to claims for the FST New Housing Rebate as if they were applications made under section 68.

This amendment is effective January 1, 1991.

Section 121.1 Application of Anti-avoidance Rule

The general anti-avoidance rule set out in section 274 applies to Part VIII of the *Excise Tax Act* – i.e., the FST inventory rebate. New section 121.1 clarifies how the general anti-avoidance rule will be interpreted for purposes of Part VIII.

This amendment is effective January 1, 1991.

Clause 8

Application of GST to Federal Crown

ETA
122

The press release of March 27, 1991 indicated that section 122 would be amended, effective January 1, 1991, to confirm that Part IX of the Act is binding on the federal government (Her Majesty in Right of Canada) in all respects. This amendment confirms that federal departments, agencies and corporations are required to pay GST on their purchases and that registrants making taxable supplies of property or services to the federal government are required to collect and remit the GST on those supplies. Since the reference in paragraph 122(a) to Her Majesty in right of Canada includes a reference to agents of the federal Crown, the reference to those agents in existing paragraph 122(c) is redundant and that paragraph is therefore repealed. This amendment applies as of January 1, 1991.

Clause 9

Definitions

ETA
123(1)

Subsection 123(1) defines a number of terms that apply for purposes of Part IX of the Act and Schedules V, VI and VII thereto.

For ease of reference, all of the amendments to definitions contained in subsection 123(1) are set out below in alphabetical order.

"builder"

Subclause 9(2) amends paragraph (c) of the definition "builder" in Subsection 123(1) by replacing the reference to persons who manufacture mobile homes with a reference to persons who supply mobile homes before they have been occupied as residences. Effective January 1, 1991, suppliers of new mobile homes are therefore "builders". Under section 254, where a builder of a new home makes a taxable supply of the home, the builder is authorized to credit in favour of the purchaser the GST New Housing Rebate to which the purchaser is entitled and the builder can then take a deduction for the rebate. Therefore, as a result of treating suppliers of new mobile homes as builders, purchasers of new mobile homes may claim the GST New Housing Rebate directly from the mobile home dealer at the time of sale.

Subclause 9(2) also amends paragraph (c) of the definition "builder" by extending the definition, effective January 1, 1991, to include persons who supply "floating homes" (as newly defined in subsection 123(1)) before they have been occupied as a place of residence. As a result, persons purchasing a new floating home may claim the GST New Housing Rebate from the supplier. This amendment is pursuant to the press release of March 27, 1991.

Subparagraph (d)(ii) of the definition "builder" includes a person who acquires an interest in a residential complex before it has been occupied by an individual as a place of residence under any arrangement for that purpose. The amendment under subclause 9(3) deletes the words "under any arrangement for that purpose", effective as of January 1, 1991. This ensures that a builder does not include a person who acquires a complex after it has been occupied under an agreement of purchase and sale.

The amendment in subclause 9(4) incorporates the exclusions in the existing definition of builder into new paragraphs (f) to (h) thereof. These paragraphs exclude from the definition of builder, individuals who are engaged in transactions relating to residential real property otherwise than in the course of a commercial activity – e.g., an individual who substantially renovates a cottage for the individual's personal use and enjoyment. A reference to "floating homes" is also added to paragraph (g) of the definition to coincide with the amendment to paragraph (c). New subparagraph (f)(ii) excludes from the definition of builder, individuals who hire, otherwise than in the course of a commercial activity, another person to construct or substantially renovate a residential complex. Paragraph (e) is amended to clarify that it applies to any person deemed under subsection 190(1) to be a builder.

These amendments are effective January 1, 1991.

"carrier"

This amendment adds the definition "carrier" to subsection 123(1). This definition is currently contained in subsection 1(1) of Part VII of Schedule VI. By adding the definition to subsection 123(1), it will henceforth apply for the purposes of all of Part IX of the Act. The definition is relevant for purposes of section 179, (the "drop-shipment" rules) which deals with transactions between residents and non-residents involving the transfer of tangible personal property.

This amendment applies as of January 1, 1991.

"commercial activity"

The term "commercial activity" refers to those activities that are undertaken by a person which bring the person within the scope of the GST system. Every person engaged in a commercial activity (other than small suppliers and certain non-residents) is required to register for the GST and collect and remit tax on supplies made in the course of that activity. A registered person engaged in a commercial activity is also entitled to recover, through the input tax credit mechanism, tax paid by the person on property and services acquired or imported for use in the commercial activity.

With the exception of a new profit test for certain partnerships, the amendments to the definition "commercial activity" are aimed at condensing and clarifying the definition. This is done, firstly, by incorporating the exclusions in existing paragraphs (d) and (e) of the definition directly into paragraphs (a) to (c), where relevant. Existing paragraph (f) of the definition is deleted since an office or employment is already explicitly excluded from the definitions "business" and "service" in subsection 123(1). Another redundancy is removed with the deletion of the reference in paragraph (c) of the definition "commercial activity" to a "right or interest in respect of real property". Interests in real property are already included in the definition "real property" in subsection 123(1). The parameters of paragraph (c) of the definition have been clarified with a more descriptive enumeration of the types of activities encompassed by the existing reference to "any activity engaged in by a person that involves the supply of real property".

The amendments to the definition "commercial activity" introduce a new profit test for partnerships all the members of which are individuals. The same test currently applies to proprietorships. There must be a reasonable expectation of profit from the activities engaged in by such partnerships and individual proprietorships in order for the activities to be considered to be commercial activities.

These amendments apply as of ANNOUNCEMENT DATE.

"commercial service"

This amendment adds the definition "commercial service" to subsection 123(1). A "commercial service" is defined to be, for the period January 1, 1991 to March 26, 1991, a processing service within the meaning assigned by new subsection 252(5). This definition is relevant for the purposes of revised rules, announced in the press release of March 27, 1991, which are contained in amended sections 179 and 180 and which deal with transactions between residents and non-residents relating to the transfer of tangible personal property.

"consideration"

"Consideration" is a term most commonly used in the context of contracts. However, in some circumstances, amounts can become payable for a supply by operation of law in the absence of a contract. The definition "consideration" is being added so as to remove any doubt that such amounts that clearly would be consideration for a supply if there were a contract, are treated as consideration for purposes of Part IX and Schedules V, VI and VII to the Act. This would address, for example, situations where services are rendered to a person without having been contracted for and the person is required, by law, to pay fair value for the services received. The amount so required to be paid would be treated as consideration. In all cases, in order to be consideration, the amount must be payable "for a supply". Therefore, amounts that are paid, for example, as taxes, fines or gifts from governments or other persons, whether payable by operation of law or under an agreement, will continue not to be treated as consideration since these amounts are not payable for a supply.

The definition applies as of January 1, 1991.

"convention"

This amendment adds the definition "convention" to subsection 123(1). The definition defines those conventions in respect of which organizers, non-resident exhibitors, and sponsors of conventions are entitled to rebates under new sections 252.3 and 252.4. As well, the definition is relevant for purposes of new section 167.2, which provides that the portion of a registration fee for a convention that is charged to a non-resident person and that relates to the cost of the convention facility or related convention supplies (as defined in subsection 123(1)) will not be subject to tax.

These rules for conventions were announced in the press releases of December 18, 1990 and May 15, 1991. The amendment applies as of January 1, 1991.

"convention facility"

This amendment adds the definition "convention facility" to subsection 123(1). A "convention facility" is defined essentially as any premises leased or provided under a licence to a sponsor or organizer of a convention (as defined by subsection 123(1)) for use exclusively as the site for the convention.

This definition is relevant for purposes of determining the portion of the tax attributable to the convention costs that is rebatable to certain non-residents under new sections 252.3 and 252.4. As well, the definition is relevant for purposes of determining what, if any, portion of the admission fee to a convention charged to a non-resident person is relieved of tax under new section 167.2. These rules relating to conventions were announced in the press releases of December 18, 1990 and May 15, 1991. The amendment applies as of January 1, 1991.

Effective March 27, 1991, the definition "commercial service" is amended and defined to be any service in respect of tangible personal property, other than a financial service and a service, supplied by a carrier, of shipping the property. This change removes some of the borderline problems associated with the previously announced definition. This change ensures that the rules in amended sections 179 and 180 cover any service supplied by a registered Canadian supplier in respect of tangible personal property of an unregistered non-resident person where the supplier of the service takes physical possession of the property.

"cooperative corporation"

The new definition "cooperative corporation" is relevant for purposes of section 140. Under section 140, shares or other securities of certain cooperatives are excluded from the rule that would result in tax applying where a membership is supplied in connection with the security.

"cooperative housing corporation"

The new definition "cooperative housing corporation" is relevant for purposes of the definition "cooperative corporation" and section 140, which is being amended to exclude, from its application, shares in a cooperative corporation (the main purpose of which is not to provide dining, recreational or sporting facilities). The definition "cooperative housing corporation" is also relevant to new section 13.1 of Part I of Schedule V, which exempts property or services supplied by a cooperative housing corporation to occupants of a residential unit owned by the corporation.

This amendment is effective January 1, 1991.

"courier"

This amendment adds the definition "courier" to subsection 123(1). This definition is relevant for purposes of new section 143.1, new subsection 240(2.1) and Schedule VII, all of which relate to imported goods. Related provisions of the *Customs Act* also use the term "courier" and it is therefore important that its interpretation for purposes of the *Excise Tax Act* be consistent with its interpretation for purposes of the *Customs Act*. Accordingly, "courier" is defined in subsection 123(1) to have the meaning assigned by subsection 2(1) of the *Customs Act*, effective as of the day on which a regulation under that subsection assigning a meaning to "courier" comes into force.

"credit note"

The term "credit note" is used to refer to a note issued by a supplier that evidences an adjustment to which section 232 applies. The amendment to the definition "credit note" is consequential to the addition of a new reference to debit notes in section 232.

This amendment applies as of January 1, 1991.

"debit note"

The addition of the definition "debit note" in subsection 123(1) is consequential to amendments to section 232, which will treat the issuance of debit notes for price adjustments recorded by purchasers in the same way as the issuance of credit notes for such adjustments recorded by suppliers.

"employee"

The definition "employee" is added to subsection 123(1) to ensure that a reference in any provision of Part IX to an "employee" includes a reference to an "officer".

This definition is consistent with the current administrative interpretation and therefore applies as of January 1, 1991.

"employer"

This amendment adds the definition "employer" to subsection 123(1) so that, in relation to a person who is an officer of an organization, any reference to "employer" will be interpreted as a reference to the person who remunerates the officer for his or her services in relation to the office.

As this definition is consistent with the current administrative interpretation, the amendment applies as of January 1, 1991.

"exclusive"

Under both the existing and amended definition of "exclusive" in subsection 123(1), this term means "all or substantially all" when used in relation to non-financial institutions and it means "all" when used in relation to financial institutions. The amendment deletes the definition, within the definition, of "all or substantially all", to clarify that the latter phrase, when used elsewhere in Part IX of the Act, takes on the same meaning for all persons.

This amendment applies as of January 1, 1991.

"financial service"

A supply of a financial service falls into the category of an exempt supply included in Schedule V to the Act unless it is specifically listed in Schedule VI as a zero-rated supply. Paragraph (f) of the definition "financial service" in subsection 123(1) includes the payment or receipt of an amount as principal, interest or dividends in respect of a financial instrument and the payment or receipt of benefits or claims under an insurance policy. Paragraph (f) is amended in subclause 9(5) to clarify that these activities will only be considered financial services when they are payments or receipts of amounts of money.

This amendment applies to supplies made after September 14, 1992.

As announced in the press release of December 18, 1990, paragraph (j) of the definition "financial service" is amended in subclause 9(6) to include adjusting services in respect of a marine insurance claim, regardless of whether the person providing the service is a licensed adjuster. This change applies as of January 1, 1991.

Furthermore, as announced in the press release of March 27, 1991, the definition "financial service" is amended by the addition of paragraph (j.1) to include the provision of damage appraisals to insurers or adjusters. This change is also effective as of January 1, 1991. However, damage appraisal services supplied after ANNOUNCEMENT DATE will be treated as financial services only where the service includes an inspection of the damaged property.

The press release of March 27, 1991 omitted a reference to paragraph (r) of the definition "financial service", which contains a general exclusion for the professional services of an accountant, actuary, lawyer and notary. This standard exclusion will apply to damage appraisal services as well. However, in the event that such a professional supplied a damage appraisal service on or before ANNOUNCEMENT DATE, clause 192 provides that tax is not payable on the supply. If the professional has already collected an amount as tax on the service, that amount must be remitted. However, the supplier in this case may make an adjustment under section 232 and refund the amount to the client or the client may apply for a refund under section 261 of the Act. Since the supplier is not treated as having made an exempt supply, the supplier may claim input tax credits in the normal manner. However, in the case where the professional did not charge or collect an amount as tax on the service, clause 192 deems the supply to have been an exempt supply and the supplier would not be eligible for input tax credits in respect of inputs used exclusively in making that supply.

Paragraph (p) of the definition "financial service" is amended in subclause 9(7) by adding a reference to new paragraph (j.1) of the definition to ensure that damage appraisal services included in the latter paragraph are not excluded under paragraph (p).

Finally, the definition "financial service" is amended in subclause 9(8) by adding new paragraph (r.1) to the definition which provides that the service of arranging for the transfer of ownership of shares of a cooperative housing corporation is excluded from the definition "financial service". As a result, the service of a real estate agent who assists in the sale of a housing cooperative share will be taxable as are the services of real estate agents generally.

This amendment is effective as of ANNOUNCEMENT DATE but does not apply to services supplied under an agreement in writing entered into on or before that date.

"floating home"

This amendment adds the definition "floating home" to subsection 123(1). This definition is relevant for purposes of the amended definitions "builder", "real property", "residential complex" and "residential unit", all of which refer to floating homes. Any reference to these terms in the GST New Housing Rebate provisions or in the real property exemptions in Part I of Schedule V will therefore include a reference to floating homes.

A "floating home" is a structure consisting of a building that is permanently affixed to a floating platform that is not capable of self-propulsion and is designed to be occupied as a place of residence for individuals. Pleasure craft and houseboats are not floating homes, even if used for residential purposes. As well, free-standing appliances and furniture sold with the floating home are excluded from the definition. The addition of the definition "floating home" is pursuant to the press release of March 27, 1991 and applies as of January 1, 1991.

"foreign convention"

This amendment adds the definition "foreign convention" to subsection 123(1). A foreign convention is defined as a convention at least 75% of the admissions to which are reasonably expected to be supplied to non-residents and the sponsor of which is headquartered outside Canada.

The definition is relevant for purposes of the rules relating to non-resident rebates in respect of conventions, which were announced in the press releases of December 18, 1990 and May 15, 1991 and are contained in new sections 189.2 and 252.4. The new definition applies as of January 1, 1991.

"insurance policy"

As announced in the press release of December 18, 1990, the definition "insurance policy" in subsection 123(1) is amended, in subclause 9(9), to exclude product warranties. As a result, product warranties are also excluded from the definition "financial instrument". The effect of this amendment is that product warranties will be taxable, whether or not they are provided by an insurer.

However, in accordance with the announcement made in the press release of March 27, 1991, only product warranties sold to a person who is not acquiring the product for resale (i.e., the end user) are taxable. Other guarantees in respect of warranties, such as performance bonds purchased from insurers by warranty companies in connection with their outstanding warranties, are exempt.

These amendments apply to warranties supplied after 1990.

"membership"

Subsection 123(1) defines "membership" to include certain rights acquired in connection with a share, bond, debenture or other security. For example, memberships in private recreational clubs are often acquired through the purchase of shares in the club. The existing definition describes the right as being provided under the terms and conditions of the security. However, in practice, the condition of holding a security of the club is contained in the bylaws of the organization or in a separate agreement under which the membership right is conveyed. This amendment, in subclause 9(1), to the definition "membership" therefore deletes the reference to the terms and conditions of the security and instead provides that the right must be conditional on the acquisition or ownership of the security, regardless of where that condition is set out.

This amendment applies as of January 1, 1991.

"month"

This amendment adds the definition "month" to subsection 123(1) to clarify the meaning of that term, such that, for example:

- the last day of the period that is one month and that begins on January 1, is January 31;
- the last day of the period that is one month and that begins on January 15, is February 14; and
- the last day of the period that is one month and that begins on January 30, is February 28, or, if the year is a leap year, February 29.

This amendment is consistent with the current administrative interpretation and therefore applies as of January 1, 1991.

"mutual insurance federation"

This amendment adds the definition "mutual insurance federation" to subsection 123(1). The definition is relevant for the purposes of the new definition "mutual insurance group" in subsection 123(1). The definition "mutual insurance federation" describes mutual insurance corporations that are required by provincial statute to be members of a federation of such insurers. The structure of the federation and relationships with and between its members is similar to the relationship between a central credit union and its member credit unions. However, a mutual insurance federation will not include a corporation the main purpose of which is

- related to automobile insurance;
- to provide compensation to insurance policy holders of, or claimants on, insolvent insurers; or
- to establish and manage a guarantee fund, cash reserve fund, mutual aid fund or similar fund for the benefit of its members and to provide financial assistance with regard to losses sustained on the winding-up or dissolution of its members.

This amendment applies as of January 1, 1991.

"mutual insurance group"

This amendment adds the definition "mutual insurance group" to subsection 123(1). This definition is relevant for the purposes of the definition of closely related corporations contained in the amended section 128. The definition is also relevant for purposes of the closely related corporations election in the amended section 150 and the amended definition "qualifying subsidiary" in subsection 123(1). Members of a mutual insurance group are deemed to be closely related to, and qualifying subsidiaries of, each other. In addition, members of a mutual insurance group are deemed to be registrants for the purposes of section 128 and to have jointly elected under section 150. A mutual insurance group will include:

- a mutual insurance federation;
- the federation's member mutual insurance corporations;
- the federation's investment fund; and
- if a reinsurance corporation exists, the federation's dedicated reinsurance corporation.

This amendment, together with the amendments noted above and the addition of the definition "mutual insurance federation" in subsection 123(1), implement rules for mutual insurance groups announced in the press release of November 5, 1991 and are applicable as of January 1, 1991.

"non-profit organization"

The definition "non-profit organization" in subsection 123(1) is amended (in subclause 9(1)), for greater certainty, to explicitly exclude governments (and their agents).

This amendment applies as of January 1, 1991.

"organizer" of a convention

This amendment adds to subsection 123(1) the definition of an "organizer" of a convention. This definition is relevant for purposes of new section 252.4 under which tax on certain supplies made to the organizer of a foreign convention, or on a supply made by the organizer to the sponsor of a foreign convention, may be rebated.

This amendment applies as of January 1, 1991.

"prescribed"

The definition "prescribed" in subsection 123(1) of the English version of the Act is amended in subclause 9(17) to refer to forms and the manner of filing "authorized", rather than "prescribed", by the Minister of National Revenue. This is to allow the flexibility to accept a form or a manner of filing that is satisfactory to the Minister but that may not have been previously prescribed. The definition is also amended to refer to information "specified" by the Minister so as to avoid the need for a Ministerial regulation in all cases. Finally, the definition is extended to the manner of making or filing an election.

Subsection 123(1) of the French version of the Act is amended in subclause 9(20) to add the definition "réglementaire". This is to clarify that, consistent with the definition "prescribed" in the English version, the term refers not only to that which is prescribed by regulation but also to that which is determined in accordance with rules prescribed by regulation.

These amendments are effective as of January 1, 1991.

"qualifying subsidiary"

The definition "qualifying subsidiary" in subsection 123(1) is relevant for purposes of the definition of closely related corporations in amended section 128. The amendment to the definition "qualifying subsidiary", contained in subclause 9(10), provides that a member of a mutual insurance group (as defined in subsection 123(1)) is a qualifying subsidiary of all other members of that group. As a result, where a corporation is jointly owned by several members of a mutual insurance group, the corporation is considered to be closely related to each of the members of the mutual insurance group if, together, the members satisfy the 90% share ownership test contained in section 128.

This amendment was announced in the press release of November 5, 1991 and is effective as of January 1, 1991.

"real property"

Subclause 9(11) amends paragraph (c) of the definition "real property" in subsection 123(1) to include a "floating home" and any leasehold or proprietary interest in a floating home or a mobile home. As a result, floating homes are treated in the same way as other residential properties and proprietary and leasehold interests in a floating or mobile home are treated as interests in real property.

This amendment is pursuant to the announcement in the press release of March 27, 1991 dealing with floating homes and is effective January 1, 1991.

"recipient"

The term "recipient" is defined in existing subsection 123(1) to be the person who pays or agrees to pay consideration for a supply, where there is such consideration. In nearly all cases, the person who "pays" the consideration is the same person who "agreed to pay" it, by which is meant the person who contracted for the supply and who is therefore liable under the contract to pay the consideration. However, the reference to the person who "pays" consideration addresses the situation where there is no agreement for the supply, such as where a person is required by operation of law to pay another person for property or services received, notwithstanding that there was no agreement for the supply.

Some questions have arisen in cases where a person pays consideration for a supply for which another person contracted. Often it is the case that an agent pays consideration on behalf of a purchaser who is liable to pay. Where an agent makes a payment on behalf of a purchaser, the purchaser is considered to have paid that consideration and is therefore the only "recipient" of the supply. However, to avoid any ambiguity in this regard, the definition "recipient" is amended by setting out each case under a separate paragraph so as to clarify that each is mutually exclusive. Further, the definition in the case where there is no consideration for the supply is clarified by specifying what is meant by the words "the person to whom a supply is made" in the existing definition. As well, it clarifies that where the latter phrase is used elsewhere in Part IX of the Act or in Schedule V, VI or VII, it is a reference only to the recipient of the supply as defined in subsection 123(1).

This amendment applies as of January 1, 1991.

"registrant"

The amendment to the definition "registrant" is consequential to the amendment to subsection 240(1). Taken together, the amendments clarify that any person engaged in a commercial activity in Canada is required, subject to certain exceptions, to be registered at the time the person makes the first taxable supply in the course of the commercial activity and that the person has 30 days from that time to file the application to be registered with the Minister of National Revenue.

This amendment is effective as of January 1, 1991.

"related convention supplies"

This amendment adds the definition "related convention supplies" to subsection 123(1). "Related convention supplies" refers to those convention expenses that are eligible for a non-resident rebate under new sections 252.3 and 252.4, as announced in the press releases of December 18, 1990 and May 15, 1991. The amendment is effective January 1, 1991.

"residential complex"

The amendment in subclause 9(12) to the definition "residential complex" deletes the reference to "mobile home" in paragraph (a) of that definition as mobile homes are specifically included in new paragraph (c.1) of the definition. This amendment is effective January 1, 1991.

Mobile homes are currently included under paragraph (a) of the existing definition "residential complex". Subclause 9(13) adds paragraph (c.1) to that definition to include mobile homes and clarifies that land on which a mobile home is affixed is part of the residential complex (unless the mobile home is in a residential trailer park). Floating homes (as newly defined in subsection 123(1)) are included in the definition under new paragraph (c.2). As a result, any reference in Part IX of the Act to a residential complex – as in the real property exemptions in Part I, Schedule V and the GST New Housing Rebate provisions – includes a reference to a floating home. This amendment is effective January 1, 1991.

Effective as of ANNOUNCEMENT DATE, paragraphs (c.1) and (c.2) are renumbered as paragraphs (d) and (e) and a substantive change is made to that portion of the definition "residential complex" following paragraph (e), clarifying that, where part of a building is a hotel or similar premise, only that part is excluded from the definition of a residential complex. As a result, part of a building can qualify as a residential complex even though another part is a hotel. For example, a used residential unit may be located in the same building as a hotel, but may not be part of the hotel (i.e., not a suite or room in the hotel). The amendment ensures that the resale of such a residential unit will be exempt as long as it meets all other conditions for exemption under Part 1 of Schedule V. This amendment is effective ANNOUNCEMENT DATE.

"residential trailer park"

This amendment adds the definition "residential trailer park" to subsection 123(1). This definition is relevant for purposes of the self-supply rules in amended section 190 and for purposes of the exemption in section 7 of Part I of Schedule V for the supply of a site in a residential trailer park.

A "residential trailer park" is a "trailer park" (as defined in subsection 123(1)) comprised of at least two sites, 90% or more of which are intended to be leased to individuals for occupation by a travel trailer or mobile home. In addition, 90% or more of the leases must be for a term of at least one month in the case of mobile homes (or other residential units), and at least twelve months in the case of travel trailers or motor homes (or other trailers that are not residential units). In all cases, the sites must be serviced and accessible for use by a mobile home throughout the year. Also included in the definition are any buildings, fixtures and appurtenances to the park that are reasonably necessary for the use and enjoyment of the sites or for the operation of the park.

This amendment is effective January 1, 1991.

"residential unit"

The definition "residential unit" in subsection 123(1) is amended by subclause 9(15) to include a "floating home" as defined in subsection 123(1). Thus, a "floating home" is included in any reference in Part IX of the Act to a residential unit – e.g., the real property exemptions and the GST New Housing Rebate.

This amendment is effective January 1, 1991.

"segregated fund"

As announced in the press release of December 18, 1990, effective January 1, 1991, the definition "segregated fund" in subsection 123(1) is amended, in subclause 9(1), to extend its application to insurance policies other than life insurance policies. The definition is relevant for purposes of section 131, which deems an insurer and a segregated fund of the insurer to be separate persons.

As a result of this amendment to the definition "segregated fund", funds of an insurer held in respect of any business of the insurer, including annuities and pension plans, are considered to be separate persons from the insurer. Consequently, supplies of taxable services made by an insurer to any segregated fund of the insurer are subject to GST.

"service"

This amendment, in subclause 9(16), to the definition "service" in subsection 123(1) deletes the existing reference to "officer" in that definition. This change is consequential to the addition of the definition "employee" to that subsection. The definition "employee" includes an "officer".

This amendment applies as of January 1, 1991.

"short-term accommodation"

The definition "short-term accommodation" in subsection 123(1) is amended, in subclause 9(17), to clarify that the reference in that definition to the "same" individual is a reference to the individual for whose use the accommodation was supplied.

This amendment is consistent with the current administrative interpretation and is effective January 1, 1991.

"specified Crown agent"

This amendment adds the definition "specified Crown agent" to subsection 123(1). The Crown agents to be prescribed for purposes of this definition are the agents of the federal government that are currently prescribed under the *Crown Agents (GST) Regulations* for purposes of existing paragraph 122(c), which is being repealed (see the commentary on clause 8).

To the extent that these agents are engaged in commercial activities, they follow the same rules as do private business in relation to the claiming of input tax credits to recover tax on purchases. As well, they follow the same rules as other businesses with respect to the treatment of sales of property on which no input tax credit was claimed. Accordingly, specified Crown agents are excluded from the rule under new subsection 200(4), which provides that all sales of capital property of governments are taxable. For specified Crown agents, like other registrants, if such property were not used primarily in a commercial activity, it would not be taxable on resale. The definition "specified Crown agent" is also relevant for purposes of amended subsection 209(1), which provides that the capital real property of specified Crown agents is treated like capital personal property.

This definition applies as of January 1, 1991.

"sponsor"

This amendment adds the definition "sponsor" of a convention to subsection 123(1). This definition is relevant for the purposes of new sections 167.2, 189.2 and 252.4, which set out rules for visitor rebates in respect of conventions as announced in the press releases of December 18, 1990 and May 15, 1991. The amendment is effective as of January 1, 1991.

"taxable supply"

Subclause 9(1) amends the definition "taxable supply" in subsection 123(1) of the Act to delete the exclusion of an exempt supply. The deleted words are redundant since a taxable supply is defined to be a supply "made in the course of a commercial activity" and a commercial activity, as defined in that subsection, does not include the making of an exempt supply.

"taxi business"

This amendment adds the definition "taxi business" to subsection 123(1). The definition, as announced in the press release of December 18, 1990, is relevant for purposes of amended section 240, which requires all small suppliers carrying on a taxi business to register for GST purposes. The definition is also relevant for purposes of new section 171.1, which provides special rules that apply when small suppliers who carry on a taxi business begin or cease to be registered for purposes of their other commercial activities. This amendment is effective January 1, 1991.

"trailer park"

The definition "trailer park" is added to subsection 123(1). This definition is relevant for purposes of the definition "residential trailer park" in subsection 123(1). A "trailer park" is an area of land that consists solely of one or more sites, each of which is intended to be leased to persons who will place a mobile home or travel trailer (or, similar vehicle) on the site. Included in the definition is any other land that is reasonably necessary for the use and enjoyment of the sites by the occupants and land that is reasonably necessary for the operation of the park.

This amendment is effective January 1, 1991.

Clause 10

Interest and Penalties

ETA
124

Section 124 sets out rules for computing interest and penalties under Part IX of the Act.

124(2) Interest and Penalty Compounded

New subsection 124(2) clarifies that, consistent with administrative practice, for purposes of daily compounding of interest and penalty, interest and penalty rates are to be added together as a single rate equal to the penalty rate plus the interest rate. This amendment is for greater certainty only and is effective January 1, 1991.

124(3) and (4) Application of Interest

Consistent with the treatment of remittances of income taxes and excise taxes, new subsection 124(3) provides that after the enactment of an amendment to Part IX of the *Excise Tax Act* or a related provision, the provisions of that Part concerning interest apply from the time at which the amendment becomes applicable. Thus, for example, if an amendment imposed a new self-supply rule on registrants that had the effect of increasing a registrant's net tax due on a day before the amendment was enacted, interest would be computed from that due date on any portion of the increase that was not remitted by that date. As well, if an amount becomes payable to a person under Part IX as a result of the passage of a relieving amendment, the interest provisions will apply in respect of the payment as if the amendment had been enacted on the same day as it became applicable. New subsection 124(3) applies as of January 1, 1991 except that interest will not accrue prior to ANNOUNCEMENT DATE on any increase in a registrant's or taxpayer's liability resulting from an amendment. However, it should be noted that, in accordance with the existing provisions, any amount collected as or on account of tax is required to be remitted with the return for the period in which the amount was so collected, whether or not it was collected on the basis of an amendment. Any delay in the remittance of such amounts will result in the application of interest in the normal manner under the existing interest provisions.

Clause 11

Closely Related Corporations

ETA
128

Section 128 contains rules for determining whether two corporations are considered to be "closely related" for purposes of Part IX of the Act. This determination is relevant for purposes of sections 150 and 156, which respectively provide an election to effectively exempt and zero-rate transactions between members of a closely related group.

Subclause 11(1)

ETA
128(1)(a)(vi)

This amendment repeals subparagraph 128(1)(a)(vi), which provides that where two corporations are 90% owned by the same person or group of persons (5 persons or less), the two corporations are considered to be closely related.

This amendment implements the announcement in the press release of December 18, 1990 concerning closely related corporations and is effective as of January 1, 1991.

Subclause 11(2)

ETA
128(3)

In order for two persons to be considered closely related, subsection 128(1) requires that the persons be registrants and corporations. Under new subsection 128(3), credit unions and members of a mutual insurance group (as defined in subsection 123(1)) are deemed to be registrants for the purposes of this section. In addition, an investment fund that is a member of a mutual insurance group is deemed to be a corporation.

This amendment implements the announcement concerning closely related corporations in the press release of November 5, 1991 and is effective as of January 1, 1991.

Clause 12

Small Supplier Divisions of a Public Service Body

ETA
129

Under section 129, a public service body (as defined in subsection 123(1)) engaged in one or more activities in separate branches or divisions may apply to have any such branch or division treated as though it were an unregistered small supplier. As such, provided the supplies made through the division do not exceed the small supplier threshold set out in section 148 (generally $30,000 of taxable supplies per year, excluding capital property sales), the division would be treated as a small supplier, even if the total taxable supplies made by all divisions of the body were to exceed the threshold. The effect of being treated as a small supplier is that the division is not required to collect GST on any of its supplies (other than taxable sales of real property) and does not claim input tax credits to the extent that its purchases are for use in making the non-taxable supplies. Of course, if the body is entitled to receive partial rebates under section 259, it would be able to claim a rebate in respect of the tax paid on its purchases for use in its small supplier divisions.

This amendment repeals existing section 129 and replaces it with new sections 129 and 129.1. The amendment is being made, first, to clarify the rules that currently apply to divisions of public service bodies by reason of the deeming provisions contained in the existing section. Secondly, the amendment implements refinements to these rules that were announced on March 27, 1991 and March 10, 1992.

Subsection 129(1) Meaning of "small supplier division"

This subsection defines the term "small supplier division" for the purposes of sections 129 and 129.1. A small supplier division is a division of a public service body (as defined in subsection 123(1)) that would qualify as a small supplier under section 148 if it were a separate person and that has been designated, under subsection 129(3), by the Minister of National Revenue as eligible for small supplier status.

The conditions for qualifying as a small supplier under section 148 essentially remain unchanged from the existing rules except that new subsection 129(1) clarifies that, for purposes of determining whether a division of a public service body falls within the small supplier threshold, that division will not be considered to be associated with any other division of the body nor with any associate of the body. In other words, only supplies made through the division are taken into account.

Subsection 129(2) Branches of Public Service Bodies

New subsection 129(2) parallels existing subsection 129(1). The subsection permits a public service body to apply, in prescribed form, to the Minister of National Revenue to have a branch or division of the body treated as if it were a small supplier.

Subsection 129(3) Designation by Minister

This subsection provides the authority for the Minister of National Revenue to designate a branch or division of a public service body as eligible to be treated as a "small supplier division" if the Minister is satisfied that the following criteria are met:

(1) the branch or division can be separately identified by reference to its location or the nature of its activities,

(2) separate records and books of account are maintained in respect of the branch or division, and

(3) an earlier designation of the branch or division was not revoked within the past year on the request of the body.

The first two criteria above parallel those set out in existing paragraphs 129(2)(a) and (b). The third criterion is added to avoid the possibility of a division revoking its small supplier status (so as to begin claiming input tax credits, and charging GST, where applicable) and subsequently re-electing to be treated as a small supplier (i.e., not charging tax) within the same year.

It should be noted that a branch or division that is designated will nevertheless lose its entitlement to be treated as a small supplier, even if its designation has not been revoked, if and when it no longer qualifies as a small supplier under section 148 (i.e., its total taxable supplies exceed the small supplier threshold).

Subclause 12(2) ensures that, where an application to treat a branch or division of a public service body as a small supplier has been approved before the day this amendment is enacted, and that approval is not revoked, the division's status as a small supplier division will automatically continue under new sections 129 and 129.1.

Subsection 129(4) Revocation of Designation

This subsection provides the authority, set out in the existing subsection 129(4), for the Minister of National Revenue to revoke a designation. However the new subsection 129(4) also specifies that such a revocation may be made on the request of the public service body.

Subsection 129(5) Notice of Revocation

This subsection parallels the provisions set out in existing subsection 129(4), which describes the form and content of the notice of revocation of a designation.

Subsection 129(6) Supply of Property on Becoming a Small Supplier Division

This subsection sets out rules that will apply when a branch or division of a public service body that is a registrant becomes a small supplier division and, therefore, is to be treated as though it were an unregistered small supplier. These rules are similar to those of subsection 171(3), which apply where a person ceases to be a registrant, such as when a small supplier de-registers for GST purposes. By virtue of subsection 171(3), such a person must remit tax on all property held for use in a commercial activity at the time of de-registration. This payment of tax is intended to ensure that any input tax credit previously claimed by the person in respect of the property is recaptured. The application of these rules to branches or divisions of public service bodies that become small supplier divisions is achieved under existing subsection 129(1) by virtue of the deeming rule and the cross reference in that subsection to section 171.

Amended subsection 129(6) dispenses with the cross reference to section 171 and, instead, sets out the self-assessment provisions in full as they specifically apply to non-capital property of branches or divisions that become small supplier divisions (the treatment of capital property and improvements is explained below in the commentary on subsection 129.1(6)). However, as of January 1, 1991, the self-assessment provision under new subsection 129(6) will differ from its counterpart in subsection 171(3) in that the amount of tax required to be remitted by the public service body upon a branch or division becoming a small supplier division will be equal to the total of all input tax credits that the body was entitled to claim in respect of the property, rather than tax calculated on the fair market value of the property. This will avoid having to determine the current value of such things as inventory and supplies on hand at the time a branch or division becomes a small supplier division. As well, in accordance with the press releases of March 27, 1991 and March 10, 1992, no tax will be payable under subsection 129(6) in respect of property acquired or imported by a public service body before 1991. Where a public service body is required to pay tax because of subsection 129(6), the body will, if it is entitled to claim partial rebates under section 259, be able to claim a rebate in respect of that tax.

Subsection 129(7) Services and Rented Properties on Becoming a Small Supplier Division

This subsection parallels subsection 171(4), which applies with respect to services and rented properties when a person ceases to be a registrant. As with new subsection 129(6), the rules in new subsection 129(7) are provided for under existing subsection 129(1) by virtue of the cross reference therein to section 171. However, the application of those rules is clarified under new subsection 129(7) by setting out the rules in full as they apply specifically to branches or divisions of public service bodies becoming small supplier divisions.

New paragraph 129(7)(d) provides that, once a branch or division becomes a small supplier division, it will not be able to claim input tax credits for any portion of services previously acquired that are to be rendered to the division after that time or for any portion of the rent on a leased property that is for a period after that time, to the extent that the property is used by the small supplier division. This is consistent with the rule that unregistered small suppliers are not entitled to claim input tax credits for their inputs.

New paragraph 129(7)(e) provides that, if the body has already claimed the input tax credit for services to be rendered to a small supplier division or rent attributable to the use of the leased property by the division, the credit will have to be added to the body's net tax for the reporting period in which the division becomes a small supplier division.

Subsection 129.1(1) Supply by Small Supplier Division

This subsection parallels section 166 and clarifies that, just as any unregistered small supplier is not required to collect tax on supplies (other than sales of real property) made by the supplier, so too are "small supplier divisions" designated under section 129 relieved of having to collect tax. This is consistent with the rules provided for under existing subsection 129(1). However, in addition, new subsection 129.1(1) provides that the consideration for supplies made through the small supplier divisions of a public service body is not included in determining, under section 249, whether the body is eligible to file quarterly or annual returns.

Subsection 129.1(2) Restriction on Input Tax Credits for Purchases

As announced in the press release of March 27, 1991, this subsection provides that a public service body will not be entitled to claim input tax credits with respect to any tax paid or payable after March 27, 1991 for property that is acquired or imported for consumption, use or supply in the course of activities engaged in by a small supplier division of the body or for services that were, or are intended to be, so consumed, used or supplied.

Subsection 129.1(3) Restriction on Input Tax Credits for Leases

This subsection provides a similar restriction on claiming input tax credits for leased property as is provided under subsection 129.1(2) for services. In accordance with the March 27, 1991 press release, a public service body is not entitled to claim an input tax credit for tax paid or payable after March 27, 1991 on any lease payment for a period (referred to as a "lease interval") during which the leased property is used by a small supplier division of the body. For example, if rent is payable by a public service body monthly under a lease of a building and, at the beginning of any month covered by the lease, the body intends to use 60% of the building for activities of a small supplier division, the body will not be entitled to claim, as an input tax credit, 60% of the tax calculated on that month's rent.

Subsections 129.1(4) and (5) Change in Use of Non-Capital Property

As announced in the press release of March 27, 1991, new subsection 129.1(4) provides change-in-use rules for non-capital property that a public service body begins, after that date, to hold for consumption, use or supply in its small supplier divisions after having used the property in commercial activities of other divisions of the body. (The change-in-use rules for capital property are explained below under the note to new subsection 129.1(6)).

New subsection 129.1(4) incorporates two refinements to the rules as announced on March 27, 1991. First, the provision will apply only where there is a change in the primary use of property. Therefore, if, for example, a computer program begins to be utilized by a small supplier division 20% of the time, input tax credit claimed on the purchase of the program will not be recaptured. The rule has also been simplified by providing that the amount of tax required to be remitted by a public service body upon a change in the primary use of property will be equal to the total of all input tax credits to which the body was previously entitled in respect of the property, rather than tax calculated on the fair market value of the property. This will avoid having to value the property at the time of the change in use.

New subsection 129.1(5) is essentially the corollary to the change-in-use rule set out in new subsection 129.1(4) and represents a further refinement to the rules as announced in the press release of March 27, 1991. The purpose of this provision is to allow a public service body to claim input tax credits, which previously would have been recaptured under subsection 129.1(4) or denied outright under subsection 129.1(2), when the body changes the use of non-capital property from use primarily in its small supplier divisions to use primarily in its other divisions. The subsection deems the body to have paid tax at the time of the change in use equal to the lesser of the total unrecovered tax on the property and the tax calculated on its current fair market value. The body would then determine, under section 169, how much of the deemed tax may be claimed as an input tax credit based on the extent to which the property is held at that time for consumption, use or supply in commercial activities of the body.

Subsections 129.1(6) and (7) Use of Capital Property

New subsection 129.1(6) deems the use of capital property by a small supplier division to be otherwise than in a commercial activity. The effect of this deeming provision is to deny input tax credits for capital property to the extent that it is acquired or imported for use in a small supplier division. This is consistent with the announcement in the press release of March 27, 1991. Further, this deeming provision will apply for purposes of Subdivision d of Part IX of the Act (i.e., the change-in-use rules for capital property). Therefore, when a division of a public service body becomes a small supplier division, the body will automatically be considered to have decreased the use in commercial activities of any capital property that it then holds for use in that division. This will trigger change-in-use rules in Subdivision d of Division II and, as a result, the body will have to pay tax on the property based on the extent of the change in use, unless the body had previously been denied an input tax credit in respect of the property. A similar result would be obtained if the body were to increase the use of capital property in an existing small supplier division.

Consistent with the announcement on March 27, 1991, new subsection 129.1(7) provides that the change-in-use rules will not apply to a reduction in use in commercial activities that occurs on or before that date by reason of new subsection 129.1(6). Furthermore, new section 198.1, added by subclause 59(1), ensures that, consistent with the prior announcements, the change-in-use rules will not apply to capital property that was acquired or imported before 1991, or to capital property that was acquired before 1994 as used property on a non-taxable basis, when a branch or division of a public service body becomes a small supplier division.

Clause 13

International Shipping Corporations

ETA
132(5)

New subsection 132(5) provides for the same residency rules for the purposes of the GST as apply for purposes of the *Income Tax Act* for certain international shipping companies. International shipping corporations are deemed to be resident in another country throughout a year where the corporation is incorporated under the laws of that other country, the corporation's principal business in the year consists of operating ships in international traffic, all or substantially all of its gross revenue for the year is from that business and it has not been granted articles of continuance in Canada before the end of the year.

This amendment was announced in the press release of November 5, 1991 and, consistent with the parallel amendment to the *Income Tax Act*, is effective for taxation years commencing after February, 1991.

Clause 14

Separate Supplies of Real Property

ETA
136(3)

Existing subsection 136(3) provides that, where the builder of an addition (e.g., a new wing) to a multiple unit residential complex sells the entire complex before the addition has been occupied and the sale of the complex would have been exempt were it not for the addition, the sale of that portion of the complex not including the addition is exempt under section 5 of Part I of Schedule V. The supply of the addition, however, is taxable as the addition is treated as a supply separate from the rest of the residential complex. This ensures that tax is payable only in respect of the addition, which would not previously have been subject to tax under the self-supply rules in subsection 191(4).

The amendment to subsection 136(3) clarifies that the tax status of a supply of an interest in the property or part is the same as a supply of the property or part.

This amendment is effective January 1, 1991.

ETA
136(4)

New subsection 136(4) is the counterpart to subsection 136(3) in the case of a residential trailer park. It applies to the supply of a residential trailer park that has been increased in size and for which section 191 has not applied because the increased area was not occupied before the supply of the park. In these cases, subsection 136(4) deems the supply of the increased area and the rest of the park to be separate supplies. As a result, the increased area is taxable and the rest of the park is exempt under section 5.3 of Part I of Schedule V.

This amendment is effective November 5, 1991.

Clause 15

Financial Services in Mixed Supply

ETA
139

Existing section 139 treats a single transaction that involves the supply of a number of separable financial services, non-financial services and goods for a single consideration as a supply of financial services only. This rule is intended to avoid the need to divide the single consideration among several coincident supplies. In the absence of this section, each supply would be treated as an independent supply and the single consideration for the supplies would be allocated appropriately.

The amendments to section 139 clarify when this section will apply to packages of financial services and other goods and services. Specifically, this section will continue to apply to supplies of financial services, other services and property that are supplied together for a single consideration. However, with the amendment, this rule will not apply to supplies of property that is capital property of the supplier. In addition, this section will require that the financial services be related to the other services and property, and that it be the normal business practice of the supplier to supply the services and property together.

These amendments also clarify that this rule will only apply where the total consideration for financial services exceeds 50% of the total of all amounts that would be the consideration for each of the financial services, other services and property, had each been supplied separately.

This amendment applies to supplies made after September 14, 1992.

Clause 16

Supply of Membership With Security

ETA
140

The purpose of section 140 of the Act is to ensure that the full value of a taxable supply of a membership in an organization, such as a private recreational club, is subject to tax, where the cost of obtaining the membership is partly made up of the cost of acquiring otherwise exempt shares or other securities of the organization as a condition of obtaining the membership. In accordance with the announcement regarding memberships in the press release of November 5, 1991, the amendment to section 140 clarifies this treatment by deeming the consideration for the supply of the security to be part of the consideration for a separate supply of the membership right. Further, the amended section 140 deletes the reference to the terms and conditions of the security since the membership condition relating to the ownership of the security is often contained in other documents. Finally, as announced in the press release of June 24, 1991, the amendment ensures that section 140 does not apply to memberships in a cooperative corporation (as defined by subsection 123(1)) the main purpose of which is not to provide dining, recreational or sporting facilities.

Clause 17

Use in Commercial Activities and Other Activities

ETA
141

Existing section 141 is being split into two separate sections in recognition of the fact that subsections 141(1) to (4) and (6) and (7) serve a distinct purpose from subsection 141(5). The provisions of the latter subsection are being incorporated into new section 141.1.

Subsections 141(1) to (5) are intended to relieve registrants from having to apportion tax paid on the acquisition or importation of property or services for use in both commercial and non-commercial activities when all or substantially all of the consumption or use is either commercial or non-commercial.

New subsections 141(1) to (4) parallel existing subsections 141(1) to (4) with three technical changes. First, the exclusion for financial services, currently contained in subsection 141(6), is incorporated directly into each of subsections (1) to (4) and existing subsection 141(6) is therefore repealed. Second, the reference to "supply" in each of those subsections is deleted. Those references are unnecessary because the issue of prorating between taxable and exempt uses does not arise when the property is sold rather than used. In the case of a supply by way of lease, licence or similar arrangement, the supplier is using the property in so supplying it and, therefore, the reference to "use" is sufficient.

The third technical change in subsections 141(2) and (4) is the addition of the words "or imported" so that the same prorating rules apply in relation to imported property and services as apply in relation to property and services acquired domestically.

Existing subsection 141(7) has been renumbered as subsection 141(5).

These amendments are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

ETA
141.1

Existing subsection 141(5) is repealed and replaced by new section 141.1. The purpose of this section is to provide rules that clarify the GST treatment of extraordinary transactions that do not necessarily occur in the ordinary course of a business or an adventure or concern in the nature of trade such as:

- the disposition of personal property that was used in a business or an adventure or concern in the nature of trade;

- bulk sales of personal property that was originally acquired for the purpose of sale; and

- starting and winding-up commercial activities.

New section 141.1 describes more explicitly than does the current provision those activities that are intended to be treated as part of a commercial activity. Therefore, the existing very general provision in paragraph 141(5)(a) referring to anything done in the course of or in furtherance of a commercial activity is not necessary and is therefore deleted.

Existing paragraph 141(5)(b) provides that anything done in connection with the supply of property that was consumed or used in the course of a commercial activity is deemed to be part of the commercial activity. New subsection 141.1(1) clarifies and expands upon that rule. First, new paragraph 141.1(1)(a) provides that supplies of personal property will be considered to be made in the course of a commercial activity if the property was acquired, imported, manufactured or produced for consumption or use in a commercial activity or, regardless of the intention at the time of acquisition or importation, if it was actually consumed, used, manufactured or produced in a commercial activity. The key change in this rule is that it is extended to apply to property of a person that was manufactured or produced by the person.

New paragraph 141.1(1)(b) is the corollary to new paragraph 141.1(1)(a). Paragraph 141.1(1)(b) provides that supplies of personal property will not be considered to be made in the course of a commercial activity if the property was consumed, used, manufactured or produced exclusively in non-commercial activities and that was the exclusive purpose for which it was acquired, imported, manufactured or produced.

The addition of this corollary rule will obviously affect only those persons who are at least partly engaged in non-commercial activities. For those persons, the rule essentially means that if they sell property for which they were not entitled to any input tax credits by virtue of the purpose for which the property was acquired or imported, the sale will not be taxable. One of the major groups that benefit from this rule is public sector bodies. The rule essentially extends the same treatment to their non-capital property as already applies to their capital property, which is not taxable on resale if input tax credits were not claimable (i.e., the property was not used primarily in commercial activities).

Another major group to which this rule will apply is financial institutions. However, the scope of this rule is limited by the fact that it applies only where no input tax credits were claimed on the property due to its intended and actual use. Registered financial institutions will have claimed partial input tax credits for many of their purchases, owing to the integrated nature of their exempt and taxable operations. However, there are some financial institutions whose activities are exclusively non-commercial and who therefore are not required to be registered for GST purposes. These financial institutions will benefit from this rule because it effectively ensures that an unregistered business, which is not otherwise engaged in a commercial activity, would never be obliged to register solely in order to collect tax on a one-off sale of personal property that was used in the business and not acquired or produced for the purpose of re-supply. In all cases, for both the registered and unregistered business that sells property in the circumstances covered by new paragraph 141.1(1)(b), this rule prevents a cascading of tax on the property.

While new subsection 141.1(1) deals with property that was acquired, imported, manufactured or produced for consumption or use, new subsection 141.1(2) deals separately with property and services acquired, imported, manufactured or produced for resale. Paragraph 141.1(2)(a) ensures that, generally, the sale is considered to be a taxable supply. For example, if a vehicle had been leased by an employer for an employee's use and, upon the expiry of the lease, the employer purchased the vehicle exclusively for the purpose of reselling it to the employee, that sale would be taxable and there would be no need to determine whether the sale was made in the course of an activity that is otherwise a commercial activity of the employer.

There are three notable exceptions to the rule in subsection 141.1(2):

- exempt supplies;
- supplies made in the course of a business or an adventure or concern in the nature of trade without a reasonable expectation of profit by individuals and partnerships whose members are individuals; and
- sales of personal property and services acquired, imported, produced or manufactured exclusively for the purpose of exempt sale.

The latter exception would apply if, for example, a non-profit club were to acquire chocolate bars to be sold, for fund-raising purposes, by volunteers on an exempt basis. Suppose that, at the end of the campaign, the club sold the remaining chocolate bars to a distributor. The club would not have been entitled to claim input tax credits in respect of the purchase of the chocolate bars since they were acquired exclusively for exempt supply. Accordingly, under paragraph 141.1(2)(b), the bulk resale of the chocolate bars by the club would not be taxable.

New subsection 141.1(3) replaces and clarifies existing paragraph 141(5)(c). This subsection clarifies that there is a requirement to prorate tax on inputs used to acquire, establish, dispose of or terminate an activity that is partly a non-commercial activity (i.e., to the extent that it involves making exempt supplies) and partly a commercial activity.

These amendments will be effective as of ANNOUNCEMENT DATE.

Clause 18

Place of Supply Rules

ETA
142

Section 142 sets out the rules for determining whether a supply is considered to be made in or outside Canada for GST purposes. The GST does not apply to supplies made outside Canada.

Subclause 18(1)

General Rule

ETA
142(1)

This amendment adds to subsection 142(1) a reference to amended section 179 (the "drop-shipment" provision) dealing with transactions between residents and non-residents involving transfers of goods. Under subsections 179(2) and (5), certain supplies are deemed to be made outside Canada to ensure that the GST does not apply to those supplies.

The revised rules for drop-shipments were announced in the press release of March 27, 1991 and are effective January 1, 1991. This amendment to subsection 142(1) is therefore also effective January 1, 1991.

Subclause 18(2)

Mobile and Floating Homes

ETA
142(3)

The inclusion of mobile and floating homes under the definition of "real property" in subsection 123(1) would, in the absence of any provision to the contrary, lead to situations where such homes would be taxed, even if they were delivered outside Canada.

New subsection 142(3) provides that, for the purposes of the place of supply rules in section 142, a floating home and a mobile home, when not permanently affixed to land, are treated as tangible personal property and not real property. As a result, the rules for tangible personal property apply in determining whether a supply of a mobile or floating home is made in or outside Canada.

This amendment is effective January 1, 1991.

Clause 19

Supply by Non-resident

ETA
143

Subclause 19(1)

Existing subsection 143(2) deems the supply by a non-resident person of prescribed property (i.e., books, periodicals and magazines) that is valued at $40 or less and sent by mail or courier to a recipient in Canada to be made in Canada if the non-resident person is a registrant. As a result, tax under Division II of the Act applies in respect of the imported publications and the non-resident supplier is required to collect that tax.

The amendment provides that, for subsection 143(2) to apply, the supplier must be registered for GST purposes. This amendment ensures that non-residents who did not register when required to do so are not faced with an outstanding liability for Division II tax on previous supplies when they do register, recognizing that in these circumstances, Division III tax would have been collected when the publications were imported. This removes a potential disincentive for such non-resident suppliers to register.

This amendment is effective as of January 1, 1991.

Subclause 19(2)

Subsection 143(2), as amended, is being repealed with respect to supplies made after 1992. New subsection 143.1, added by clause 20, will apply to these supplies.

Clause 20

Supply of Goods Sent by Mail or Courier

ETA
143.1

New section 143.1 is being added to replace and expand the application of existing subsection 143(2).

Existing subsection 143(2) deems the supply by a non-resident person of prescribed property (i.e., books, periodicals and magazines) valued at $40 or less and sent by mail or courier to the recipient at an address in Canada to be made in Canada if the non-resident supplier is a registrant for GST purposes. As a result of the $40 threshold, where registered non-residents supply publications, some of which exceed the threshold while others of which do not, the non-residents are required to divide their billings and collect Division II tax only on the publications valued at $40 or less. Division III tax applies to the property valued at over $40. This results in undue complexity for the suppliers. This amendment removes the $40 threshold and thereby provides that all such publications sent to Canada by mail or courier by a registered non-resident person are treated consistently, regardless of the value of the publications. Furthermore, new section 143.1 is extended to apply to resident suppliers of prescribed publications who arrange to have foreign publications sent by mail or courier to Canada.

This amendment applies to supplies made after 1992.

Clause 21

Supplies by Governments and Municipalities

ETA
146(c)

Consistent with the amendment to subsection 162(2), the amendment to paragraph 146(c) clarifies that a supply, by a government or a municipality or a board, commission or other body established by a government or a municipality, of the right to take or remove peat or products grown in water will be taxable when the supply is made to consumers or to non-registrants (such as small suppliers) who are in the business of supplying such products to consumers.

This amendment is effective January 1, 1991.

Clause 22

Small Supplier Threshold

ETA
148

Section 148 provides rules for determining whether a person qualifies as a "small supplier" for purposes of Part IX of the Act. Small suppliers are not required to collect tax on their supplies (other than taxable sales of real property) and are not entitled to claim input tax credits. Under existing paragraphs 148(1)(a) and (2)(a), the $30,000 small supplier threshold is determined by reference to the total consideration for taxable supplies, excluding any proceeds from sales of capital property.

In accordance with announcements made in the press releases of November 5, 1991 and March 10, 1992, amended paragraphs 148(1)(a) and (2)(a) exclude the value of consideration that is attributable to goodwill of a business. (For the purposes of these paragraphs, consideration that is attributable to goodwill is consideration referred to in new section 167.1). The goodwill of a business or part of a business of a person other than financial institution is excluded from the calculation, effective November 5, 1991. Goodwill of financial institutions is excluded from the calculation effective March 10, 1992.

Paragraphs 148(1)(a) and (2)(a) are also amended to add an express reference to taxable supplies made outside Canada, which is currently only implied by the general wording of the paragraphs. This amendment is effective as of January 1, 1991.

Finally, amended paragraphs 148(1)(a) and (2)(a) exclude the value of consideration for zero-rated supplies of financial services made after ANNOUNCEMENT DATE.

Clause 23

Financial Institutions

ETA
149

Section 149 sets out rules for determining whether a person is to be treated as a financial institution for purposes of Part IX of the Act. This determination is relevant for purposes of several provisions of that Part that apply to financial institutions or, conversely, exclude financial institutions. Most notably, the change-in-use provisions relating to capital property of a financial institution, the election to exempt supplies under section 150 and the rule under section 185 for claiming input tax credits relating to the provision of financial services.

Subclause 23(1)

Listed Financial Institutions

ETA
149(1)(a)(iii)

This amendment provides that, where a person's principal business is as a trader, dealer, broker or salesperson of money, the person is considered to be a "listed financial institution" for the purposes of Part IX of the Act. The amendment ensures that traders and dealers in money (which does not fall within the definition "financial instrument") are subject to all of the same rules as traders and dealers in financial instruments.

This amendment was announced in the press release of March 27, 1991 and is effective April 1, 1991.

Subclause 23(2)

"De minimus" Financial Institutions

ETA
149(1)(b)

Paragraph 149(1)(b) provides a "de minimus" test for determining whether persons earning a significant amount of investment income or income from separate fees for financial services are considered to be financial institutions for purposes of the GST. Several provisions of Part IX of the Act do not apply to financial institutions. One such provision is section 259, which provides partial rebates to certain organizations. Other provisions apply to financial institutions in a different manner than they apply to non-financial institutions (e.g., capital property rules). As announced in the press release of March 27, 1991, the "de minimus" test will not be applicable to municipalities, school authorities, hospital authorities, public colleges or universities (all as defined in subsection 123(1)) or to charities and qualifying non-profit organizations (as defined in section 259).

This amendment is effective as of January 1, 1991.

Subclause 23(3)

Business Income Under "De Minimus" Test

ETA
149(4)

Existing subsection 149(4) provides that interest and dividends received by a person from related corporations is included in determining whether the person is a financial institution under the "de minimus" test in paragraph 149(1)(b), only where such interest and dividends are considered business income of the person for income tax purposes. This amendment excludes all interest and dividends received from related corporations, regardless of the income tax treatment.

This amendment was announced in the press release of March 27, 1991 and is effective as of January 1, 1991.

Subclauses 23(4) and (5)

Meaning of "investment plan"

ETA
149(5)(a)

This paragraph lists trusts that are defined as "investment plans" for the purposes of section 149. To ensure consistency with the terminology used in the *Income Tax Act*, the terms "registered pension fund or plan" (subparagraph (a)(i)) and "employment benefit plan" (subparagraph (a)(viii)) are changed to "registered pension plan" and "employee benefit plan" respectively.

This amendment applies as of January 1, 1991.

Clause 24

Election for Exempt Supplies

Subclause 24(1)

Credit Unions

ETA
150(6)(d)

Paragraph 150(6)(d) provides that, for the purposes of section 128 (definition of closely related corporations), a credit union is deemed to be a registrant. Paragraph 150(6)(d) is being repealed since this same provision is added in new subsection 128(3).

This amendment is effective January 1, 1991.

Subclause 24(2)

Mutual Insurance Groups

ETA
150(7)

New subsection 150(7) provides that members of a "mutual insurance group" (as newly defined in subsection 123(1)) are deemed to be members of a closely related group at all times and to have made an election under section 150 to exempt supplies made between the members. This avoids the requirement for all of the members to file joint elections under subsection 150(1).

This amendment is pursuant to the press release of November 5, 1991 and is effective January 1, 1991. Since the members are deemed to have made an election that is in effect at all times, any supplies of services or supply by way of lease of property that were made between them before this amendment was announced are deemed to be exempt supplies. As a result, members would be denied input tax credits in respect of those supplies. Clause 193 ensures that where such input tax credits have already been claimed, no interest or penalty will apply on the amounts as long as these are repaid by the required filing date for the first return of the member due after November 5, 1991.

Clause 25

Non-arm's Length Supplies by Public Sector Bodies

ETA
155

Section 155 provides an anti-avoidance rule under which certain non-arm's length supplies made for less than fair market value or for no consideration are deemed to have been made for fair market value. As a result, tax applies on the fair market value of the property or service supplied.

New subsection 155(2) clarifies that this anti-avoidance rule does not apply to supplies between related public sector bodies when those supplies are otherwise exempt under any of sections 6 to 10 of Part VI of Schedule V, (i.e., the nominal consideration exemptions). Public sector bodies often supply property or services to related entities for no consideration or for nominal consideration. Section 155 will not override that exemption.

This amendment applies as of January 1, 1991.

Clause 26

Closely Related Group Election for Nil Consideration

ETA
156

Under existing section 156, a specified member of a closely related group and a corporation that is also a specified member of a closely related group must file a joint election in order for supplies between the members to be treated as though they were made for no consideration (i.e., zero-rated).

Pursuant to a press release issued on April 27, 1992 by the Minister of National Revenue, section 156 is amended, effective April 27, 1992, to remove the requirement to file this election with Revenue Canada.

Effective immediately after ANNOUNCEMENT DATE, section 156 is further amended to clarify the rules applicable to persons who make a joint election under that section. New section 156 clarifies the definition "specified member". Existing section 156 defines a specified member as a corporation that is a member of a closely related group and that makes all or substantially all taxable supplies. As a result of these rules, a large one-off supply of exempt services, such as financial services, could change the status of a specified member. New section 156 stipulates that, to be considered a "specified member," a corporation must be a member of a closely related group and all or substantially all of the property of the corporation must have been acquired or imported by the corporation for consumption, use or supply exclusively in the course of its commercial activities. As a result of these amendments, specified members will not change status as often as they might under the existing provision. In addition, existing subsection 156(5) has been incorporated into the definition of specified member.

Existing section 156 automatically revokes the election for nil consideration on the first day of the fiscal year in which either of the joint electors ceases to qualify as a specified member of the group. This could, in effect, result in retroactive revocation of the election. Instead new section 156 will treat the election as having been revoked on the day on which either of the joint electors ceases to qualify as a specified member of the group.

Existing section 156 specifies that an election under that section is effective from the beginning of the first day of a fiscal year, or the first day of a reporting period for new members of the group. The section also permits voluntary revocation of the election effective the first day of any reporting period that ends in any fiscal year after the election was filed. Under new section 156, the joint election or voluntary revocation may be made at any time, but must specify its effective date. As such, the election will be effective from the date of the election to the effective date of any voluntary revocation.

Clause 27

Discount Coupons

ETA
157

The repeal of section 157 is consequential to the amendments to section 181.

Subsection 157(1) deals with the treatment of coupons issued for no consideration while subsection 157(2) deals with the sale of a gift certificate. The rules governing both the treatment of coupons and gift certificates are being added to section 181.

The amendments to section 181, and the repeal of section 157, are pursuant to the press release of October 17, 1990 and are effective January 1, 1991.

Clause 28

ETA
162

Natural Resources

Under section 162, the provision of any right to explore for or exploit natural resources, the supply of a lease or licence relating to such rights, or the supply of any right to a royalty or profit interest in relation to the resource is considered not to be a supply for GST purposes and, as a result, no GST is payable. For example, if a registrant pays for the right to explore for minerals, no tax will apply. The exception to this rule is where a supply of a right to take or remove natural resource products such as forestry products or minerals is made to a consumer or to a non-registrant who is in the business of making supplies of that product to consumers. For example, if a small supplier pays a fee for the right to cut trees for the purpose of selling firewood to consumers, the fee is taxable.

Subsection 162(2) is amended, pursuant to an announcement in the November 5, 1991 press release, to clarify that, where a consumer or non-registrant receives a supply of a right to take or remove water directly from a lake, river or other natural resource, it will be deemed not to be a supply and therefore will not be taxable. For example, if a fee is charged for consumers to access a lake in order to obtain drinking water, tax will not apply to that fee.

This is consistent with the overall treatment, under Part IX of the Act, not to tax the supply of water to consumers. However, the right to take or remove "products" that grow in the water, such as seaweed or wild rice, continues to be taxable when the supply is made to consumers or non-registrants who are in the business of making supplies of such products to consumers.

Section 162 is also amended to clarify that the supply of the right to explore for or exploit a peat bog or a deposit of peat is not considered to be a supply and therefore is not subject to tax, except where the supply of the right is made to a consumer or non-registrant who is in the business of resupplying the product to consumers. This amendment recognizes that a peat bog is a natural resource similar to forestry or mineral resources.

These amendments are effective January 1, 1991.

ETA
162.1

Demurrage and Penalties on Rolling Stock

New section 162.1 is added to ensure that any demurrage charge and any penalty for delay in returning railway rolling stock will not be subject to GST. This is consistent with amendments, announced in the press release of December 18, 1990, that are being made to section 182 to ensure that such payments are likewise not subject to GST under that section.

Clause 29

ETA
164

Special Fund-Raising Events by Registered Charities and Political Parties

Section 164 provides that when a charity (including a registered charity or a registered Canadian amateur athletic association within the meaning of the *Income Tax Act*) or a registered political party (within the meaning of the *Canada Elections Act*) makes a supply of a right of admission to a dinner, ball, concert or similar fund-raising event, no GST applies on the portion of the admission price that relates to the gift or contribution.

As announced in the press release of March 27, 1991, this section is amended, as of January 1, 1991, to extend this treatment to political parties registered under provincial legislation, regional and local associations of such parties, as well as registered candidates to federal and provincial elections. In addition, the section will apply to registered referendum committees governed by federal or provincial legislation imposing requirements relating to referendum expenses.

This provision is also re-worded to provide that the value of the consideration for the supply of an admission to such an event is deemed to be the lesser of the actual amount paid and the fair market value of the supply. This has the same effect as the existing provision, which deems that the residual amount (i.e., the gift) is not part of the consideration for the admission.

As announced in the press release of November 5, 1991, section 164 is further amended, effective as of that date, to apply to registered municipal political parties, as well as to candidates to municipal elections, provided they are governed by legislation that imposes requirements relating to election finances.

ETA
164.1

Feedlots

Under the existing rules of the Act, a feedlot is generally required to charge tax on its entire invoiced price. This result is not consistent with the objective that supplies of feed for zero-rated livestock be zero-rated. This amendment, which adds new section 164.1, combined with new section 2.1 of Part IV of Schedule VI, results in the zero-rating of that portion of a feedlot's charge for service that is reasonably attributable to feed for zero-rated livestock, up to a maximum of 90 per cent of the entire charge by the feedlot.

New subsection 164.1(1) sets out the definition of "feed" for the purposes of this section. New subsection 164.1(2) provides that, where a separate amount attributable to feed is identified in an invoice for a supply of a service by a feedlot, that amount will be treated as consideration for a separate supply of the feed. However, the consideration for the deemed supply of the feed may not exceed 90 per cent of the total charge by the feedlot. New section 2.1 of Part IV of Schedule VI zero-rates this supply. Subsection 164.1(2) clarifies that a feedlot that is considered to be a farming business under the *Income Tax Act* will be considered to be a feedlot for GST purposes.

This amendment was announced in the press release of June 24, 1991 and is effective January 1, 1991.

ETA
164.2

Payments by Unions

New section 164.2 has been added to clarify that amounts paid by unions to compensate employers for the temporary loss of employees' services are not subject to tax. When an employer grants leave to a unionized employee to participate in union activities during normal working hours, the union usually reimburses the employer in accordance with the terms of a formal agreement (whether it be a collective agreement or other agreement entered into pursuant to labour legislation). Such compensation might cover salary, benefits and other costs, such as travel costs paid by the employer in respect of the time for which the employee was away from his or her employment duties on union business.

The press release of November 5, 1991 clarified that these payments by the union to the employer are not subject to GST effective January 1, 1991.

Clause 30

Pay Telephone Services

ETA
165(3)

Subsection 165(3) contains special rules for the application of the GST to coin-operated telephone services. Consistent with existing administrative and industry practice, paragraph 165(3)(b) provides that, where the charge for a call is 70 cents, 5 cents of tax applies and, in any other case, the tax is calculated as 7% of the amount deposited and the resulting product is rounded to the nearest 5 cents.

This amendment is pursuant to the announcement relating to pay telephone services in the press release of March 27, 1991 and is effective as of January 1, 1991.

Clause 31

Sale of a Business

ETA
167

Subclause 31(1)

Subsection 167(1) Supply of Assets of Business

Subsection 167(1) sets out the rules for the sale of all or substantially all of the assets used in a business. The existing rules in subsection 167(1) permit an otherwise taxable sale of a business to be made without tax applying if both parties to the transaction so elect.

The amendments to section 167 introduce a number of new rules that will broaden the application of the section. The most significant change is that the rules in section 167 will apply in all cases without the need for an election to that effect. Moreover, rather than being limited to property used in a commercial activity, these rules will apply to all property sold. This ensures that businesses engaged in both commercial and non-commercial activities will be able to take advantage of the roll-over provision without having to identify their assets that were not used in their commercial activities and sell them separately from the rest of their assets.

The preamble to subsection 167(1) is amended so that the subsection will apply not only to a business carried on by the supplier, but also a business established by the supplier. This amendment clarifies that a sale under a "turn-key" arrangement could constitute the sale of a business of the supplier for purposes of section 167. A further amendment to the preamble clarifies that either ownership, possession or use of all or substantially all of the property that the recipient requires to operate the business must be transferred under the agreement for the sale of the business. As a result, section 167 will apply to all of the property being supplied under the agreement to sell the business and not just the property used in a commercial activity. Furthermore, it is not necessary that all the property of the business be sold under the agreement – some may be leased to the recipient. Another change in the preamble extends the application of the section to businesses sold by non-registrants (i.e., small suppliers). Finally, the preamble is amended to clarify its application to the sale of part of a business of the supplier as long as that part constitutes all or substantially all of the property that the recipient would require to carry on that part as a business of the recipient.

Paragraph 167(1)(a) ensures the proper application of the rules in paragraphs 167(1)(b),(c) and (d) by deeming the supplier of the business to have made a separate supply of each property or service that is supplied under the agreement for the sale of the business.

Paragraph 167(1)(b) parallels existing paragraph 167(1)(a) in that it provides that tax is not payable on the sale of a business or part of a business that meets the conditions set out in section 167. The major change is that an election to this effect is no longer required. Some exclusions from this rule are also introduced. Specifically, tax will be payable on taxable services that are to be rendered by the supplier pursuant to the agreement to sell the business, as well as the taxable supply of property by way of lease by the supplier. Tax will be payable on any taxable sale of real property where the recipient is not a registrant.

The rule in existing paragraph 167(1)(b) is repeated in new paragraph 167(1)(c) with two important modifications. The existing provision deems all the property that is supplied as part of the sale of the business and that was used by the supplier in a commercial activity to have been acquired by the purchaser for use exclusively in commercial activities. The purpose of this rule is to ensure that, if the purchaser uses the property in commercial activities to a lesser extent than the supplier last used the property (i.e., the purchaser would have been entitled to a lesser input tax credit than the supplier), the change-in-use rules will require the purchaser to self-assess tax. However, where capital personal property was used by the supplier less than primarily in a commercial activity, the supplier generally would not have been entitled to an input tax credit and would not have had to charge tax on the property if it had been sold separately. Nevertheless, under the existing provision, tax would again be assessed on the property under the change-in-use rules if the purchaser likewise did not use the property primarily in commercial activities. Of course a purchaser in this circumstance could avoid the tax by arranging for that particular property to be sold separately. New subparagraph 167(1)(c)(i) eliminates the need for such arrangements by limiting the application of the rule to cases where the supplier would have had to charge tax if the supplier had sold the property separately. Subparagraph 167(1)(c)(ii) sets out the corollary rule by deeming the purchaser to have acquired the property for use exclusively in non-commercial activities if the supplier would not have had to charge tax on the property if it had been sold separately.

Paragraph 167(1)(d) requires a registrant who sells a business to file with the Minister of National Revenue a notice, in prescribed form, respecting the sale. The addition of this requirement is consequential to the removal of the requirement for the supplier and recipient to make an election.

These amendments to subsection 167(1) apply to any supply of a business, or part of a business, where ownership or possession of all or substantially all of the assets of the business, or part, is transferred after ANNOUNCEMENT DATE.

Subsection 167(1.1) Exception

Under new subsection 167(1.1), section 167 does not apply to the supply of a business where the vendor is a registrant (and therefore eligible to claim input tax credits) and the recipient is a non-registrant (and therefore not eligible to claim input tax credits or subject to the self-assessment rules with respect to capital property).

New subsection 167(1.1) applies to any supply of a business, or part of a business, where ownership or possession of all or substantially all of the assets of the business, or part, are transferred after ANNOUNCEMENT DATE.

Subclause 31(2)

Subsection 167(2) Supply of Business Assets of Deceased

Under the current rules of subsection 167(2), an election may be filed that allows the business assets of a deceased individual to be distributed, without the payment of tax, to any beneficiary of the deceased's estate who is a registrant.

As announced by the Minister of National Revenue on April 27, 1992, subsection 167(2) is amended, effective that date, to remove the requirement to file this election with the Minister.

Subsection 167(2) is further amended, effective ANNOUNCEMENT DATE, to remove the requirement to make an election under that subsection. Effective that date, the rules of subsection 167(2) apply automatically in cases where the circumstances described in paragraphs 167(2)(a), (b) and (c) are met.

Clause 32

Goodwill

ETA
167.1

This amendment implements changes announced on November 5, 1991 and March 10, 1992 regarding the GST treatment of goodwill. As discussed below, this amendment also reflects further refinements that are effective after ANNOUNCEMENT DATE.

As announced in the November 5, 1991 press release, the part of the consideration for the supply of a business that is reasonably attributable to goodwill will not be taxed if the business primarily involves the making of exempt supplies. This rule will only apply in circumstances where a person other than a financial institution makes a supply of a business, or part of a business, carried on by the person in Canada, the recipient is acquiring the business or part for the purpose of carrying on the business or part as a business of the recipient and part of the consideration for the supply of the business or part is attributable to goodwill of the business. This treatment of goodwill will apply where ownership or possession of all or substantially all of the assets of a business or part of a business that are included in the supply is transferred to the recipient of the supply after November 5, 1991, subject to the further amendment described below for transfers of businesses after ANNOUNCEMENT DATE.

As announced in the press release of March 10, 1992, section 167.1 is further amended by extending the above treatment of goodwill to financial institutions. This amendment will provide that where a financial institution sells a business and part of the consideration for the sale is reasonably attributable to goodwill, that consideration will not be taxed to the extent that the goodwill is reasonably attributable to the part of the business that involves the making of exempt supplies. This treatment of goodwill with respect to financial institutions will apply where ownership or possession of all or substantially all of the assets of a business or part of a business that are included in the supply is transferred to the recipient of the supply after March 10, 1992, subject to the further amendment described below for transfers of businesses after ANNOUNCEMENT DATE.

Finally, section 167.1 is amended, with respect to transfers after ANNOUNCEMENT DATE, to relieve the entire value of goodwill on the sale of a business or part of a business, regardless of whether the goodwill is attributable to commercial or non-commercial activities. This refinement coincides with the amendment to section 167 under which ownership, possession or use of all or substantially all of the property of any business or part of a business may be transferred without charging tax. In fact, the broadening of section 167 will mean that new section 167.1 need only apply where the general roll-over provision does not, namely on sales of businesses by registrants to non-registrants. This refinement to section 167 will apply where ownership or possession of all or substantially all of the assets of the business or part thereof that are included in the supply is transferred to the recipient of the supply after ANNOUNCEMENT DATE.

Clause 33

Supplies to Non-resident Delegates and Exhibitors at Taxable Conventions

ETA
167.2

This amendment relieves from tax the portion of an admission to a taxable convention, supplied by the sponsor of the convention to a non-resident delegate, that relates to the costs of the convention facility or related convention supplies (as defined in subsection 123(1)). The amendment also relieves from tax a supply, made by the sponsor of a taxable convention to a non-resident exhibitor, of related convention supplies or of a site for the promotion of goods or services of the exhibitor at the convention.

Subsection 167.2(1) Admissions to Taxable Conventions

The amendment provides that where a sponsor of a convention (as defined by subsection 123(1)) makes a taxable supply of an admission to the convention to a non-resident person, no tax is payable on the portion of the admission that is reasonably attributable to the provision of the convention facility or related convention supplies (also defined in subsection 123(1)).

The portion of the admission that is "reasonably attributable" to the provision of the convention facility or related convention supplies may be determined in either of two ways.

1. Regular method

   The percentage that the amount reasonably attributable to the provision of a convention facility or related convention supplies is of the total admission charge is the same as the percentage that the expenses relating to the provision of the convention facility and related convention supplies is of the total convention expenses.

   For instance, if the total expenses incurred by a sponsor in relation to a convention were $100,000, $40,000 of which were related to things other than the provision of the convention facility or related convention supplies, a $100 admission to the convention supplied to a non-resident delegate would be subject to tax of $2.80 ($100 x 7% x 40%) – i.e., tax would be payable on the 40 per cent of the price of admission which is attributable to expenses other than the provision of the convention facility or related convention supplies.

2. Streamlined method

In order to streamline the operation of the tax for sponsors of taxable conventions, 4 per cent of the 7 per cent tax normally applicable to an admission to a taxable convention will be considered to be "reasonably attributable" to the provision of the convention facility or related convention supplies.

This will mean that, in effect, sponsors of taxable conventions will be permitted to charge non-resident delegates tax on their admissions to taxable conventions at a rate of 3 per cent. This will streamline the administration of the tax for sponsors of taxable conventions, by relieving them of the requirement to determine the exact portion of an admission to a taxable convention supplied to non-residents in respect of which tax is payable. This will also assist sponsors of taxable conventions in setting tax-included prices of admissions in advance of the convention.

The entire price of an admission to a taxable convention supplied to a resident delegate remains subject to tax. Of course, where a registered person pays tax on an admission to a taxable convention which is acquired for consumption, use or supply in the course of the person's commercial activities, an input tax credit may be claimed by the person in the normal manner.

These rules relating to conventions were announced in the press releases of December 18, 1990 and May 15, 1991. New subsection 167.2(1) applies as of January 1, 1991.

Subsection 167.2(2) Supplies to Non-resident Exhibitors

New subsection 167.2(2) provides that no tax is payable on a taxable supply, made by a sponsor of a convention to a non-resident exhibitor, of exhibition space for the promotion of the exhibitor's goods or services at the convention. Moreover, no tax is payable on a supply of related convention supplies (as defined in subsection 123(1)) made by a sponsor to a non-resident exhibitor for use at the convention.

The rules governing the treatment of conventions were announced in the press releases of December 18, 1990 and May 15, 1991. These measures are intended to ensure that Canada's convention industry remains internationally competitive. The provisions included in this amendment are effective January 1, 1991.

Clause 34

Input Tax Credits

ETA
169

Section 169 provides that, to the extent that a taxable input is used in a commercial activity, the tax paid or payable in respect of the input gives rise to an input tax credit.

The amendments to section 169 are for the most part technical in nature and, among other things, clarify the input tax credit entitlement in respect of ongoing services, leases, and goods imported for the purpose of performing a service in respect of the goods. The amendments also clarify the rules for claiming input tax credits on improvements to capital property. Existing subsections 169(1) and (2) are combined into one subsection – new subsection 169(1).

Subclause 34(1)

Subsection 169(1) General Rule for Credits

Subsection 169(1) sets out the general rule for determining input tax credits. It provides that where property or a service is acquired or imported for consumption, use or supply by a registrant, the registrant is entitled to claim an input tax credit equal to the fraction of the tax paid or payable on the acquisition or importation that represents the extent to which the property or service is for consumption, use or supply in a commercial activity of the registrant.

Existing subsection 169(1) requires a person who is claiming an input tax credit in respect of property or a service to be a registrant at the time the property or service is acquired or imported by the person and allows the person to claim the credit for the reporting period in which tax was paid or became payable. A relieving amendment, applicable as of January 1, 1991, is reflected in the preamble of new subsection 169(1) which provides that a person need not be a registrant at the time property or a service is acquired in order to be entitled to a credit with respect to the property or service. The person need only be a registrant in the reporting period in which tax in respect of the supply becomes payable or is paid without having become payable.

Paragraph (a) of element "B" of the formula, set out in new subsection 169(1), is amended to provide that the prorating of the tax deemed under amended subsection 202(4) to have been paid in respect of a passenger vehicle or aircraft at the end of a taxation year will be based on the actual use of the vehicle or aircraft during that taxation year, rather than on the intended use referred to in the existing provision. This modification applies to taxation years ending after ANNOUNCEMENT DATE.

Paragraph (b) of element "B" of the formula, set out in new subsection 169(1), deals with property or a service that is acquired as an improvement to capital property. In accordance with announcements regarding the treatment of improvements in the press release of March 27, 1991, a registrant may claim an input tax credit for tax payable on an improvement acquired or imported after March, 1991 to the extent of the commercial use of the capital property immediately prior to the improvement being made. This differs from the existing rules for improvements under which the input tax credit is determined by reference to the use of the improved property immediately after the improvement is made. This amendment ensures that the input tax credit rules mesh with the change-in-use rules in Subdivision d of Division II of Part IX of the Act.

For property or services acquired or imported as improvements before April 1991, the general rules in paragraph (c) of element "B" of the formula apply.

Subsection 169(1.1) Determining Credit for Improvement

New subsection 169(1.1) deals with the situation where property or services are to be used partly in improving capital property and partly for some other purpose. In these cases, subsection 169(1.1) deems the provision of that portion of the property or services that is acquired or imported for the purpose of improving capital property to be a supply separate from, and not incidental to, the provision of the remainder of the property or services. The tax payable in respect of the part of the property or services for use as an improvement is deemed to be 7% of the amount of the consideration for the property or services that is capitalized for income tax purposes. The remainder of the total tax payable is deemed to be tax payable in respect of the property or services not for use in improving capital property.

As an example, consider a registrant/landlord who engages a contractor for $10,000 plus $700 GST to repair an apartment building, 15% of which is leased as retail space. Sixty per cent of the contractor's services are to be included in the adjusted cost base of the property while the remaining 40% of the services are not considered to be an improvement to the property – i.e., they are to be expensed. Under paragraph (b) of element "B" of the formula, the registrant is entitled to claim $63 as an input tax credit ($700 x .6 x .15). Under paragraph (c) of element "B", the registrant can also claim an input tax credit for the portion of the contractor's services which are not an improvement to the extent that the services were acquired for use in a commercial activity. For example, if the services were entirely in respect of the retail space, a full input tax credit of $280 could be claimed. Conversely, if the services were exclusively for the residential portion, no additional credit could be claimed.

Subsection 169(1.1) applies to property and services acquired or imported after ANNOUNCEMENT DATE.

Subsection 169(1.2) Credit for Leased Property

New subsection 169(1.2) clarifies rules for claiming an input tax credit on property which is acquired by a person by way of lease, licence or similar arrangement and for which two or more periodic payments are made. Under these rules, the person is deemed to have received a separate supply of property at the beginning of each period for which a periodic payment is paid or becomes payable and the tax calculated on the periodic payment is deemed to be the tax payable in respect of the separate supply. As a result, the person's input tax credit entitlement with respect to each payment is determined separately under subsection 169(1).

To illustrate, consider a landlord who operates a 10 unit residential apartment building for which the landlord leases, under a ten year lease agreement, water heaters at a cost of $100 plus $7 GST per month. After 5 years of leasing the water heaters, the landlord converts the apartment building into a bed and breakfast. As the landlord is now making taxable supplies of short term accommodation, the landlord, if a registrant, is entitled to claim an input tax credit for the supply of the water heaters under subsection 169(1). The credit entitlement is based on the extent to which the landlord intends to use the water heaters in a commercial activity at the beginning of each period for which a lease payment is made – i.e., $7 for each month that the building is used as a bed and breakfast.

Subsection 169(1.2) is added pursuant to the press release of November 5, 1991 and, as announced therein, is effective January 1, 1991.

Subsection 169(1.3) Credit for Ongoing Services

New subsection 169(1.3) applies to services for which two or more payments are made. It provides that, where a supply of services is made to a person and the person makes two or more payments for the supply which are attributable to different periods in which the service is to be rendered, the person is deemed to have received a separate supply of a service at the beginning of each billing period. The tax calculated on a payment for a period is deemed to be tax payable in respect of the separate supply in that period. Any input tax credit entitlement of the person in respect of the deemed supply is based on the person's intent at the beginning of the billing period and is determined under subsection 169(1).

Subsection 169(1.3) is added pursuant to the press release of November 5, 1991 and, as announced therein, is effective as of January 1, 1991.

Subsection 169(2) Credit for Goods Imported to Provide Commercial Service

As noted above, the rules in existing subsection 169(2), dealing with partial input tax credits where inputs are used less than exclusively in the course of a commercial activity of a registrant, have been incorporated into amended subsection 169(1).

New subsection 169(2) addresses the situation where a registrant imports goods of an unregistered non-resident person for the purpose of performing a commercial service (as newly defined in subsection 123(1)) in respect of the goods. To the extent that registered suppliers of such services often act as the importer of record in these circumstances, the amendment provides that they may claim the input tax credit associated with the tax payable on the importation of the goods. This measure, combined with the revised drop-shipment rules set out in amended section 179, will streamline the operation of the tax for non-residents.

This amendment was announced in the press release of March 27, 1991 and is effective January 1, 1991.

It should be noted that claiming this input tax credit in respect of imported goods may have consequences for the treatment of the goods under the amended drop-shipment rules in section 179. Specifically, where a registrant operating a warehouse imports goods of an unregistered non-resident person and does not claim an input tax credit in respect of the goods, the registrant is treated, under new subsection 179(6), as though the registrant had not acquired physical possession of the goods for the purposes of amended section 179. As a result, the registrant is relieved of any potential liability under new subsection 179(1) to account for tax on the fair market value of the goods.

Subsection 169(3) Time Tax Payable

This amendment adds a reference to new subsections 169(1.1) to (1.3) in subsection 169(3) which provides that, for purposes of determining an input tax credit for invoiced supplies, tax is considered to have become payable on the date of the invoice. The subsection is also amended to exclude from this rule lease payments which are governed by the rules of subsection 152(2) under which tax becomes payable on lease payments as they fall due under the lease agreement, notwithstanding that an invoice may be issued in advance of the payment date.

These amendments are effective January 1, 1991 but do not apply to invoices dated on or before ANNOUNCEMENT DATE in respect of lease payments governed by subsection 152(2).

Subclauses 34(2) to (4)

These amendments to subsections 169(4) and (5) dealing with documentation requirements with respect to input tax credits broaden the application of the rules such that they are not necessarily limited to input tax credits in respect of domestic supplies. Thus, authority is provided to prescribe documentation requirements with respect to importations should circumstances warrant doing so in future.

The amendment is effective ANNOUNCEMENT DATE.

Clause 35

Club Memberships

ETA
170(1)(a)

Paragraph 170(1)(a) generally denies input tax credits on the purchase of club memberships. This is an inappropriate result where a person acquires club memberships for the purpose of resale in the course of a business. In such a case, tax would apply twice to the memberships – when the supplier acquired them (and was not able to claim an input tax credit) and when the supplier resold them. To remove this anomaly, paragraph 170(1)(a) is amended to allow a registrant to claim input tax credits in respect of club memberships acquired exclusively for the purpose of resale in the ordinary course of a business of the registrant of selling such memberships. This amendment is effective January 1, 1991.

In addition, under the existing provisions of the Act, registrants are allowed to claim input tax credits in respect of the right to acquire club memberships even though they are denied input tax credits on the purchase of the memberships themselves. Paragraph 170(1)(a) is amended to apply to a right to acquire a membership in the same way as it applies to the membership itself. This amendment applies to rights acquired after ANNOUNCEMENT DATE.

Clause 36

Becoming and Ceasing to be Registrant

ETA
171

Section 171 sets out the rules that apply where persons change their GST status by becoming a registrant or ceasing to be a registrant.

Subclause 36(1)

ETA
171(1)

Under subsection 171(1), when a small supplier becomes a registrant, the supplier is deemed to have paid tax on all property the supplier is holding at that time for consumption, use or supply in the course of commercial activities. This is to enable the supplier to claim input tax credits for tax that was previously non-recoverable.

Generally, the amount of tax the new registrant is deemed to have paid is equal to the lesser of the tax that became payable or was paid before the supplier became a registrant in respect of the last acquisition or importation of the property for use or supply in commercial activities (and any improvements thereto) and 7% of the fair market value of the property. However, if the new registrant has already recovered part of that tax through a rebate under section 259, the amount deemed to have been paid under subsection 171(1) is reduced accordingly. Under existing subsection 171(1), the absolute amount of the rebate is subtracted from the amount that would otherwise be deemed to have been paid. The formula under the amended subsection, in effect, subtracts an amount equal to the applicable rebate rate times the amount otherwise deemed to have been paid.

The above change, along with several other minor wording changes in the subsection, coincides with similar changes made throughout Part IX, most notably in Subdivision d of Division II of that Part (i.e., the change-in-use rules for capital property). For example, the reference in existing subparagraph 171(1)(b)(i) to subsection 200(2) is deleted since that subsection is amended, as of ANNOUNCEMENT DATE, to deem a supply of property to have been received. Thus, the reference in new subsection 171(1) to the "last acquisition" of the property includes a reference to the deemed acquisition under subsection 200(2) without specifically listing that subsection. For the same reason, the existing reference to subsection 171(3) is also deleted.

These modifications to subsection 171(1) are effective on THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Subclause 36(2)

ETA
171(3)

Subsection 171(3) deals with the treatment of property used in a commercial activity where a person ceases to be a registrant.

The amendments to subsection 171(3) are purely technical. Paragraph 171(3)(a), which deals with non-capital property, is amended to delete the phrase "except where the supply is an exempt supply." This phrase is not necessary as there are no situations where personal property is exempt by virtue of the nature of the property.

Paragraph 171(3)(a) is also amended to deem the person who has ceased to be a registrant to have acquired the property the person held for consumption, use or supply in the course of commercial activities. This is accomplished by deeming the person to have received a supply of the property and to have paid tax. This change is consequential to an amendment to subsection 171(1) which deletes the reference to subsection 171(3) and refers instead to the "last acquisition" of the property.

The amendments to paragraph 171(3)(b) ensure that the wording of the paragraph is consistent with other provisions of Part IX of the Act.

These amendments to subsection 171(3) are effective January 1, 1991.

Subclause 36(3)

ETA
171(5)

New subsection 171(5) is added to ensure that the general rules for persons which become or cease to be registrants do not apply to taxi operators. Special rules for these operators are set out in new section 171.1.

This amendment is consequential to changes, announced in the press release of December 18, 1990, to the rules for small suppliers who are taxi operators. These consequential amendments are effective ANNOUNCEMENT DATE.

Clause 37

Taxi Businesses

ETA
171.1

New section 171.1 sets out the rules that apply where the registration of a small supplier carrying on a taxi business begins to apply to the other commercial activities of the supplier. The section also sets out the rules that apply where the registration of a small supplier taxi operator ceases to apply to those other activities. These rules essentially parallel the general rules for becoming and ceasing to be a registrant set out in section 171.

In accordance with the announcement regarding the GST treatment of taxi businesses in the press release of December 18, 1990, all persons carrying on a taxi business that is subject to regulations governing fares are required to register and collect GST on those fares, even if their sales do not exceed the $30,000 small supplier threshold. However, pursuant to new subsection 241(2), a taxi operator who is a small supplier may take advantage of the operator's small supplier status in respect of other commercial activities of the operator, until the operator ceases to be a small supplier or elects under new subsection 240(3.1) to be registered in respect of those other activities. Similarly, under new subsection 242(2.1), a small supplier taxi operator who chose to have the operator's registration apply to all of the operator's commercial activities can re-elect to be registered only with respect to the taxi business, as long as the operator had been registered for all commercial activities for at least one year.

Subsection 171.1(1) Small Supplier Taxi Operators

Under new subsection 171.1(1), the non-taxi commercial activities of a small supplier taxi operator are deemed to be non-commercial activities for as long as the registration of the operator does not apply to those activities. This means that, with respect to those activities, the operator is considered not to be a registrant. For example, if the operator made a supply through an agent in the course of one of those activities, the agency rules pertaining to supplies on behalf of non-registrants would apply for GST purposes. The operator will not be required to collect tax and will not be entitled to claim input tax credits in respect of supplies made in the course of those activities. The deeming rule also applies for purposes of the capital property change-in-use rules so that if the operator uses capital property primarily in those activities, the operator will be required to account for GST as if there had been a charge in the use of the property from primarily commercial to primarily non-commercial use.

Subsection 171.1(2) Becoming a Registrant in Respect of Non-Taxi Commercial Activities

This subsection sets out the rules relating to input tax credits that small supplier taxi operators may claim if they choose, under new subsection 240(3.1), to have their registrations also apply to their non-taxi commercial activities.

This subsection provides that where the registration of a small supplier taxi operator begins to apply to the non-taxi commercial activities of the operator, the operator is considered to have acquired the non-capital properties used in those activities immediately after that time, and to have paid tax on those assets. The operator may claim an input tax credit for this tax in the return for the period in which the registration of the operator begins to apply to the non-taxi commercial activities of the operator. The credit determined with respect to each asset will be the lesser of:

- the tax that became payable before that time by the operator on the last acquisition of the asset or the tax deemed to have been collected by the operator in respect of the asset under paragraph 171.1(3)(a) (i.e., the tax that was payable when the operator ceased to be registered for those non-taxi activities), and

- the amount of tax that the operator would be required to pay if the asset were acquired at fair market value at that time.

The operator may also claim an input tax credit for any tax that became payable before that time in respect of:

- services to be rendered to the operator after that time in respect of the non-taxi commercial activities of the operator, and

- any rent, royalty or similar payment which is reasonably attributable to the use of property by the operator in those activities after that time.

These rules do not apply to capital property used in the non-taxi commercial activities of an operator. Instead, input tax credits in respect of capital property will be available pursuant to the change-in-use rules for capital property which apply when the operator becomes registered for the non-taxi commercial activities. Paragraph 171.1(1)(b) deems those activities to be non-commercial activities only during the period the operator's registration does not apply to them. Therefore, once the registration is extended to apply to all commercial activities of the operator, the non-taxi commercial activities go from being treated as non-commercial to commercial activities and the change-in-use rules for capital property are thus triggered.

Subsection 171.1(3) Ceasing to be a Registrant in Respect of Non-Taxi Commercial Activities

This subsection sets out the treatment of property used by a small supplier taxi operator in non-taxi commercial activities when the registration of the operator ceases to apply to those activities pursuant to new subsection 242(2.1).

As the operator will have previously claimed input tax credits for tax paid on the acquisition of various assets used in the non-taxi commercial activities of the operator, and the operator will now be putting those assets to a use that is treated as non-commercial, this subsection recaptures the credits previously claimed. It does so by treating the operator as having disposed of the property at its fair market value, immediately before the operator's registration ceases to apply to the non-taxi commercial activities, and as having collected tax on that value.

Paragraph 171.1(3)(b) allows a taxi operator to include in the operator's input tax credits any GST to the extent that the tax is payable in respect of services rendered to the operator, for use in the operator's non-taxi commercial activities, before the operator's registration ceased to apply to those activities. The subsection also entitles the operator to claim input tax credits in respect of rent for the use of property by the operator in those activities before that time.

Paragraph 171.1(3)(c) denies an input tax credit for tax, which became payable before the registration ceased to apply to the operator's non-taxi commercial activities, on services relating to those activities to be rendered to the operator in the period after the registration ceases to apply to the non-taxi commercial activities of the operator and on rental payments for the use of property after that time relating to those activities.

Where a small supplier taxi operator's registration ceases to apply to the operator's non-taxi commercial activities, tax will be deemed to have been collected by the operator on capital property used in those activities under the change-in-use rules for capital property. The change-in-use rules will apply in these situations because paragraph 171.1(1)(b) deems, at that time, those activities to be non-commercial activities.

The provisions in new section 171.1 expand upon, but are consequential to, the rules for small supplier taxi operators which were announced in the press release of December 18, 1990. New section 171.1 applies as of THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 38

Appropriations of Property

Subclause 38(1)

ETA
172(2)

This amendment clarifies that subsection 172(1) applies to an appropriation of property to or for the benefit of any individual related to a shareholder, partner, beneficiary or member of a registrant referred to in section 172.

This clarification is consistent with current administrative practice and is effective January 1, 1991.

Subclause 38(2)

ETA
172(3)

This amendment, which applies as of January 1, 1991, ensures that section 172 will not apply to appropriations of property that give rise to a taxable benefit to which section 173 applies.

Clause 39

Employee and Shareholder Benefits

ETA
173

By virtue of section 173, where a registrant makes a supply (other than an exempt supply) of property or a service to an employee or shareholder of the registrant and the supply gives rise to a taxable benefit for income tax purposes, GST applies to the value of the benefit, excluding any provincial tax component. The amendments to section 173 implement a number of technical changes that are intended to clarify the application of the section, including a re-structuring of the section by incorporating into one subsection – subsection 173(1), rules currently contained in existing subsections 173(2) and (4). In addition, as explained further below, the amendments implement changes concerning the GST treatment of taxable benefits which were announced in the press release of March 27, 1991 and in the press release of April 27, 1992 issued by the Minister of National Revenue.

Subsection 173(1) Employee and Shareholder Benefits

The first substantive change in subsection 173(1) is the addition of new paragraph (1)(d) which, for greater certainty, provides that where a registrant makes property available, otherwise than by way of sale, to an employee or shareholder, that supply is not exempt and it gives rise to a taxable benefit for income tax purposes, the registrant is considered, for all purposes of Part IX, to be so using the property in commercial activities. This ensures that the registrant will generally be entitled to claim an input tax credit in respect of the property. This clarification was announced in the press release of March 27, 1991 and applies as of January 1, 1991. Paragraph 173(1)(d) also applies for purposes of determining whether a registrant that is not a financial institution is using a leased passenger vehicle or aircraft otherwise than primarily in commercial activities. If so, the registrant may make an election under subsection 173(2) to forego claiming input tax credits on the lease payments and avoid having GST apply to the supply of the vehicle or aircraft to the employee or shareholder.

The existing exceptions to the rule in subsection 173(1), which are currently found in the preamble of the subsection and in existing subsection 173(4), are paralleled in new subparagraphs 173(1)(e)(i) to (iv).

New subparagraph 173(1)(v) implements the announcement, in the press release of March 27, 1991, that registrants will be considered to have collected the GST applicable to property or services that are supplied to employees or shareholders and that give rise to taxable benefits. New subparagraph 173(1)(v) also specifies, for greater certainty, that the value of the taxable benefit, excluding any provincial tax component, is treated as consideration that is additional to any actual consideration that may be given by the employee or shareholder for the property or service. In addition, new subsection 173(1) deletes the reference to subsection 15(1.4) of the *Income Tax Act* since the amount determined under that subsection is equal to the GST on the benefit determined under subsection 15(1) of that Act. Including the amount under 15(1.4) in subsection 173(1) of the *Excise Tax Act* as a "benefit amount" would result in the GST applying twice to the benefit.

Subsection 173(2) Election in Respect of Vehicle or Aircraft

New subsection 173(2) provides for an election in respect of certain passenger vehicles and aircraft that is currently provided for under existing subsection 173(3). The changes reflected in the new provision are only intended to clarify that the election takes effect at the beginning of a reporting period in which the registrant acquires the property for use otherwise than primarily in commercial activities or, where it was not initially acquired for such purpose, a reporting period in which the registrant actually uses the property otherwise than primarily in commercial activities. In other words, the election cannot apply retroactively for a reporting period in which neither of these conditions is met.

Subsection 173(3) Effect of Election

As announced in the press release of March 27, 1991, amended subsection 173(3) provides, in paragraph (b) thereof, that where a registrant has made an election under section 173 after March 1991 in respect of a leased passenger vehicle or aircraft, the registrant is not entitled to input tax credits in respect of any lease payments attributable to a period after the election becomes effective. Where such an input tax credit was claimed before the election was made, it is recaptured under subsection 173(3).

New paragraph 173(3)(c) clarifies the effect of existing paragraphs 173(3)(d) and (e) which is to deny or recapture input tax credits of a financial institution that has made an election in respect of a vehicle or aircraft in the circumstances described in paragraph (c).

Subsection 173(4) Form of Election

As announced by the Minister of National Revenue on April 27, 1992, registrants will not be required to file with the Minister an election under section 173 that becomes effective in a reporting period ending after April 27, 1992. However, registrants will be required to retain a completed election, in prescribed form containing prescribed information, for audit purposes.

Employee and Partner Allowances

ETA
174

Section 174 deals with employee and partner allowances for expenses incurred by the employee or partner and deems the person paying the allowance to have received a supply and to have paid tax. This is in order for the person to be entitled to an input tax credit under section 169 in respect of the allowance, to the extent that it was paid in the course of commercial activities of the person. The existing section only applies to allowances that are considered "reasonable" for income tax purposes. Since the determination of the "reasonableness" of the allowance is ultimately not made until the employee or partner determines his or her income at the end of the taxation year, the employer or person paying the allowance could find themselves in a position of having an input tax credit previously claimed in respect of what was thought to be a reasonable allowance denied as a consequence of the employee or partner subsequently treating it as unreasonable for income tax purposes. This would most often occur where the employee or partner regarded the allowance as not being sufficient to cover their actual expenses – i.e., an unreasonably low allowance. The amendment to section 174 addresses this problem by providing that a person's entitlement to an input tax credit or rebate in respect of an allowance is based on whether, at the time the allowance is paid, it is reasonable for the person to consider the allowance to be reasonable for income tax purposes.

This amendment implements changes announced in the press releases of March 27, 1991 and September 14, 1992 and is effective January 1, 1991.

Clause 40

Used Goods

ETA
176

Section 176 deems tax to have been paid by a registrant acquiring used goods, in certain circumstances, from a person not required to charge tax. This is in order to enable the registrant to claim input tax credits in respect of these purchases to the extent that they are for consumption, use or supply in a commercial activity. The notional input tax credit is intended to remove tax embedded in the price of the used good which the supplier paid but did not recover. As a result, when the used good is resold by the registrant, there is no cascading of tax – i.e., GST is not charged on an amount that already includes an element of tax.

Subclause 40(1)

Acquisition of Used Goods

ETA
176(1)

Existing, subsection 176(1) deems tax to have been paid in certain circumstances where a registrant acquires a used good without paying tax, but only for purposes of determining an input tax credit of the registrant. New subsection 176(1) deems tax to have been paid for purposes of Part IX – i.e. for purposes of the GST in general. Accordingly, any reference in Part IX to tax paid, or tax payable, in respect of a supply includes a reference to the tax, if any, deemed to have been paid under subsection 176(1) in respect of that supply. As a result, for example, the calculation of the tax payable on the last acquisition of a property for purposes of the change-in-use rules under subdivision (d) of Division II of Part IX, includes tax deemed to have been paid under subsection 176(1).

These amendments to subsection 176(1) are effective January 1, 1991.

Subclause 40(2)

Exports

ETA
176(2)

Subsection 176(2) provides for the recapture of input tax credits claimable in respect of used goods acquired by a registrant if the goods are before 1994 exported or otherwise supplied by the registrant on a zero-rated basis. Under existing subsection 176(2), the recapture applies to both actual and "notional" input tax credits (i.e., input tax credits for tax deemed to have been paid under subsection 176(1)).

In accordance with an announcement in the March 27, 1991 press release regarding used goods, the amendment to paragraph 176(2)(a), effective January 1, 1991, limits the application of the recapture provisions to situations where either the registrant or a person with whom the registrant was not dealing at arm's length is eligible to claim a notional input tax credit by virtue of subsection 176(1) in respect of the used goods. In these cases, the registrant is required to account for tax on the lesser of

(a) tax that was paid or deemed to have been paid by the registrant (for example, tax deemed to have been paid under subsection 176(1), 176(4.1) or section 155) or tax that would have been paid had section 156 or 167 not applied; and

(b) tax that would have been payable if the supply were a taxable supply made in Canada.

The announcement in the press release of March 27, 1991 limiting the recapture of input tax credits on exported used goods was not intended to apply to used specified tangible personal property (for example, artwork). Because the press release was not explicit on this point, the above rules will apply to exports and zero-rated supplies of used specified tangible personal property made on or before September 14, 1992. However, for such transactions occurring after that day, the rules set out in paragraph 176(2)(b) will apply.

Paragraph 176(2)(b) is also amended by including a reference to section 156. This amendment ensures that the wording of paragraph 176(2)(b) is consistent with clause 176(2)(d)(ii)(C) of the

Act which refers to the tax that would have been paid had section 156 not applied.

Subclause 40(3)

Notional Credit for Returnable Containers

ETA
176(3)

The amendment to subsection 176(3) clarifies that a registrant cannot claim a notional input tax credit on the purchase of a used returnable container from a person who is not required to charge tax on the supply (e.g., a consumer) unless the registrant pays to the person the same amount for the empty container as the amount (including GST, if applicable) that the registrant receives when returning such empty containers to suppliers.

The amendment to subsection 176(3) is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Subclause 40(4)

Consideration Exceeding Fair Market Value

ETA
176(4)

Subsection 176(4) applies where used goods are acquired by a registrant in a non-arm's length transaction. The subsection, in effect, limits the notional input tax credit that may be claimed by virtue of subsection 176(1) to that which would be available if the consideration for the non-arms length supply were equal to the fair market value of the property at the time the supply is made.

The amendment to subsection 176(4) clarifies that the subsection applies only to situations where the consideration for the supply of the property is greater than the fair market value of the property at the time it is transferred to the recipient.

This amendment to subsection 176(4) applies to supplies of property for which all or part of the consideration is paid after ANNOUNCEMENT DATE.

Subclause 40(5)

Consideration Less Than Fair Market Value

ETA
176(4.1)

New subsection 176(4.1), in conjunction with amended subsection 176(2), deals with the situation where used goods are, before being supplied outside Canada or on a zero-rated basis, acquired by a registrant from another registrant on a non-arm's length basis for consideration less than their fair market value.

For purposes of the recapture rules in subsection 176(2), subsection 176(4.1) deems a person who acquires used goods on a non-arm's length basis for consideration less than the fair market value to have paid tax in respect of the goods calculated on their fair market value at the time ownership of the goods is transferred. As a result, this provision ensures that, for purposes of calculating the value of the actual input tax credit to be recaptured pursuant to subsection 176(2), the recapture is based on the fair market value of the used goods. The exclusion for acquisitions of used goods where section 155 applies recognizes that, by reason of that section, tax on the supply is calculated on the fair market value of the goods at the time the supply is made.

Subsection 176(4.1) is added pursuant to the press release of March 27, 1991. It applies to any supply of property where ownership is transferred to the recipient after March 27, 1991.

Clause 41

Auctioneers and Agents

ETA
177(1) to (1.4)

Existing subsection 177(1) deals with supplies made by an agent on behalf of an undisclosed principal. The amendments to section 177 provide new rules for supplies made by auctioneers and modify the disclosure requirements for other agents so that section 177 will apply wherever the name and registration number of the principal is not disclosed in writing by an agent who makes a taxable supply on behalf of the principal. New timing rules are also introduced for the claiming of input tax credits by an agent or auctioneer and the scope of section 177 is broadened to include sales made by agents on behalf of registrants where the registrant is not required to charge tax on the sale.

The rules regarding leases of property by agents are also clarified so that, in determining the amount deemed to have been paid by the agent to the principal, the agent's commission may be deducted in the manner that the principal and agent agree to allocate it over the lease period. To accommodate these changes, existing subsection 177(1) is broken into two separate subsections and new subsections (1.1) to (1.4) are added.

Subsection 177(1) Supply on Behalf of Registrant

New subsection 177(1) deals with the situations described in existing paragraph 177(1)(b) with some important modifications. First, supplies made after April 1991 by auction are excluded. This is consequential to the introduction of special rules for supplies by auction in new subsection 177(1.2).

The following further amendments are made to subsection 177(1), applicable to supplies made after 1992:

- One of the existing conditions for section 177 to apply in the case of taxable supplies made on behalf of a registrant is that the principal's name not be disclosed in a written agreement or invoice. The most relevant disclosure, however, is the principal's registration number, as it indicates that the principal is a registrant. The amendment to the preamble to subsection 177(1) modifies the disclosure requirements so that the subsection applies not only where the principal's name, but also the principal's registration number, is not disclosed in writing.

- New paragraph 177(1)(d) clarifies that a principal's liability to collect tax on the deemed supply to the agent under paragraph 177(1)(c) (and the agent's concurrent entitlement to claim an input tax credit) arises at the time the agent pays or credits to the principal an amount on account of the supply made on the principal's behalf. Paragraph 177(1)(d) also clarifies that where the supply made by the agent on the principal's behalf is by way of lease, in determining the amount deemed to have been paid by the agent to the principal, the agent's commission may be deducted, in accordance with the manner in which the two parties choose to allocate the total commission over the lease period. For example, the principal and agent may attribute all of the commission to the first period for which a lease payment is made or divide the total commission equally among all the lease payment periods.

Subsection 177(1.1) Agent's Supply for Person Not Required to Collect Tax

New subsection 177(1.1) sets out the rules which apply in the circumstances described in existing paragraph 177(1)(a). However, these rules do not apply to supplies made after April 1991 by auction as these are dealt with separately under new subsection 177(1.2).

Also, applicable to supplies made after April 1991 are new rules in paragraph 177(1.1)(c) for determining the amount of consideration an agent is deemed to have paid for the supply deemed under paragraph 177(1.1)(c) to have been made by the principal to the agent. Under these new rules, which were announced in the press release of March 27, 1991, the consideration is equal to the amount of consideration payable and the tax payable by the recipient of the actual supply made on the principal's behalf, less the fee (plus 7%) for the agent's services. Under the existing rules, the deemed consideration is entirely based on tax-excluded amounts.

Effective for supplies made after 1992, the following further amendments are made to subsection 177(1.1):

- Currently section 177 does not apply where an agent acts on behalf of a registrant in making a supply that is not subject to tax (e.g., where an agent, acting on behalf of a charity which is registered for the GST, sells property that has never been used in a commercial activity). The amendment to section 177(1.1) extends the existing rules for supplies of personal property by agents on behalf of non-registrants to supplies on behalf of registrants where the registrant is not required to charge tax on the supply.

- The current disclosure rules require that in order for section 177 to apply in the case of supplies of personal property made by an agent on behalf of a non-registrant, the agent must not have disclosed to the recipient in writing that the supply was made on behalf of a non-registrant. The new disclosure rules in paragraph 177(1.1)(c) require that the agent not disclose to the recipient in writing that the supply is being made on behalf of a person who is not required to collect tax in respect of the supply.

- The timing rules introduced in new paragraph 177(1.1)(f) parallel the new timing rules introduced in paragraph 177(1)(d). Under these new rules, the agent is deemed to have paid consideration for the supply deemed to have been made by the principal to the agent at the time the agent pays or credits an amount to the principal on account of the supply made on the principal's behalf. As a result, any entitlement that the agent may have to claim a notional input tax credit under section 176 by reason of the deemed acquisition arises at the time the agent pays or credits an amount to the principal.

Subsection 177(1.2) Supply by Auctioneer

Pursuant to the press release of March 27, 1991, subsection 177(1.2) sets out rules for supplies made after April 1991 by auctioneers. These rules apply to all supplies by auction of personal property (whether made on behalf of a registrant or a non-registrant) and to taxable supplies by auction of real property or services made on behalf of a registrant.

Under these rules, auctioneers always charge recipients tax on their supplies, unless they are supplying zero-rated items. In calculating their net GST liability, auctioneers account for tax on their commissions and on their supplies by way of auction. However, they may claim an offsetting input tax credit equal to the tax charged on the supply by auction so that their net remittance equals only the tax on their commissions. If the principal happens to be a non-registrant, the principal is not responsible for collecting or remitting GST and the auctioneer can claim a "notional" input tax credit equal to the tax collected on the supply by auction, provided an equivalent amount has been passed on to the principal. On the other hand, if the principal is a registrant, the principal must remit an amount equal to the GST on the supply by auction, less the GST paid on the auctioneer's commission. In this case, the auctioneer can claim an actual input tax credit equal to the GST on the supply by auction.

Paragraph 177(1.2)(c) deems the supply to the recipient to be made by the auctioneer and not the principal. As a result, the auctioneer is required to charge and account for GST on all supplies by auction of personal property (other than zero-rated supplies) and all taxable supplies of real property or services by way of auction which are made on behalf of a registrant.

It is by virtue of paragraph 177(1.2)(d) that the auctioneer is able to claim an offsetting input tax credit for the tax on the supply by auction. The auctioneer is deemed to have acquired the property or service from the principal and to have paid consideration at the time the auctioneer pays or credits the principal an amount on account of the supply made on the principal's behalf. The auctioneer is considered to have paid the same price as the recipient at the auction, where the principle would be required to charge tax on the property or services. Where this is not the case, (e.g., the principal is a non-registrant or the property was not used in a commercial activity), the auctioneer is deemed to have paid consideration equal to the price paid by the recipient at the auction, plus the amount of tax on that supply. As a result, the input tax credit claimable by the auctioneer is the same whether it is an actual credit, for supplies made on behalf of registrants, or a notional input tax credit for supplies made on behalf of non-registrants.

Subsection 177(1.3) Application of Section 176

Under the GST, used goods sold by a registrant are taxable. Where the used goods were acquired by the registrant from a person who was not required to charge tax, the registrant may claim a notional input tax credit on the cost of acquiring the goods by virtue of section 176. The notional input tax credit is intended to remove tax embedded in the price of the good which the owner paid but did not recover. As a result, when the used good is sold by the registrant, there is no cascading of tax – i.e., GST is not charged by the registrant on an amount which already includes a hidden component of GST.

New paragraph 177(1.3)(b) ensures that, where an auctioneer or other agent makes a supply on behalf of a principal who is not required to charge tax, the benefit of the notional input tax credit which the auctioneer or agent may claim accrues to the principal. This is accomplished by not allowing the agent or auctioneer the notional input tax credit unless an amount equal to the credit is passed on to the principal.

A further amendment is reflected in new subsection 177(1.3). New paragraph 177(1.3)(a) deems all personal property that an auctioneer or other agent supplies on behalf of a person who is not required to charge tax to be used personal property for the purposes of section 176. As a result, the auctioneer or agent may claim a notional input tax credit on new as well as used goods sold on behalf of a principal who is not required to collect tax. For example, an auctioneer who sells new inventory on behalf of an unregistered small supplier, may claim a notional input tax credit in respect of that inventory.

Subsection 177(1.4) Manner of Supplying Property

New subsection 177(1.4) clarifies that the supply deemed under section 177 to have been made by a principal to an agent or auctioneer is of the same nature as the supply made by the agent or auctioneer on the principal's behalf. For example, where an agent or auctioneer leases property to a recipient on behalf of a principal, the supply that the principal is deemed to have made to the agent or auctioneer is, by virtue of subsection 177(1.4), deemed to have been made by way of lease. This is to ensure that the agent rules appropriately interact with other provisions, such as change-in-use rules, some of which apply only where a person sells, as opposed to leases, property.

New subsection 177(1.4) applies to supplies made by an agent or auctioneer on behalf of a principal after April 1991.

Clause 42

Direct Sellers

ETA
178.1 to 178.5

Pursuant to the December 18, 1990 press release, new sections 178.1 to 178.5 are added to Part IX of the Act to provide an alternate GST collection method for direct sellers. Direct sellers distribute their products to final purchasers through independent sales contractors rather than through retail establishments. The alternate collection method provides direct sellers with the option of ignoring, for GST purposes, sales to independent sales contractors and, instead, calculating their net tax liabilities as if the sales had been made directly to final purchasers for the suggested retail price of the products. Under this optional method, the independent sales contractors do not remit tax on sales of exclusive products of the direct seller nor include revenue from such sales in determining their small supplier thresholds. Consequently, under this method of accounting for the GST, thousands of independent sales contractors are not required to register for the tax.

Section 178.1 Definitions

Section 178.1 defines a number of terms that are used in sections 178.2 to 178.5.

A "direct seller" is a person who sells exclusive products or sales aids of the person to independent sales contractors. A direct seller has the option to use the alternate collection method described above.

A "distributor" of a direct seller is an independent sales contractor who sells exclusive products to other independent sales contractors but may also make sales to final purchasers. If a joint election under subsection 178.2(2) with the direct seller is in effect, the distributor will use the alternate collection method and will account for tax on the suggested retail price of exclusive products of the direct seller.

An "exclusive product" of a direct seller is tangible personal property which is imported, manufactured or produced by the direct seller, or by another person for the direct seller, under the direct seller's brand name for supply to final purchasers exclusively by independent sales contractors of the direct seller. The definition excludes sales aids. The alternate collection method applies only to exclusive products of a direct seller.

An "independent sales contractor" includes two types of persons – an independent sales contractor of a direct seller and an independent sales contractor of a distributor of the direct seller. An independent sales contractor will have a contractual right to purchase from the direct seller, or the seller's distributor, exclusive products that the contractor will supply to other independent sales contractors or to final purchasers. The soliciting, negotiating and entering into of contracts for sale to final purchasers must occur primarily at a place that is not a fixed place of business (other than a private residence) of the independent sales contractor. The independent sales contractor of a distributor is a person who has a contractual right to purchase exclusive products from the distributor and no other person.

A "purchaser" of an exclusive product is a person who is a recipient of the product and who does not resupply the product for consideration.

"Sales aids" include products that are provided to independent sales contractors or distributors to promote or assist in the sale of exclusive products. Sales aids include samples, catalogues and advertising material.

"Suggested retail price" means the lowest published price, excluding any amount on account of GST, to final purchasers for an exclusive product of a direct seller. Under the alternate collection method, the suggested retail price is the value of the consideration on which tax is calculated.

Section 178.2 Application for Alternate Collection Method

Section 178.2 requires a direct seller, or a direct seller and a distributor, electing to use the alternate collection method to apply, in prescribed form, to the Minister of National Revenue for approval to do so. This section provides the Minister the authority to approve the application and to specify the effective date of the approval. The section also allows the direct seller, or the direct seller and the distributor jointly, to request a revocation of an earlier approval and provides the authority for the Minister to revoke an earlier approval if the direct seller or the distributor fail to comply with the provisions of Part IX of the Act. Either the direct seller or the direct seller and the distributor jointly can apply to use the alternate collection method. If the direct seller alone applies, it is the direct seller who must account for tax on the suggested retail price of exclusive products of the direct seller. If the direct seller and the distributor apply jointly, it is the distributor who must account for tax on the suggested retail price of the products. Only one application may be in effect at any time. The direct seller cannot account for tax on some sales and one or more distributors account for tax on other sales.

Section 178.3 Effect of Approval for Direct Seller

Section 178.3 sets out the rules of the alternate collection method where an approval under subsection 178.2(3) is in effect for a direct seller (i.e., where the direct seller alone has applied to use the method). Subsection 178.3(1) sets out the rules applicable to taxable supplies of exclusive products made in Canada to independent sales contractors by a direct seller. Under these rules, the direct seller accounts for GST on the suggested retail price of exclusive products sold to distributors or independent sales contractors, when the direct seller issues the invoices for these sales. The distributors and independent sales contractors recover the amount of the tax from final purchasers by including the amounts in the total charges to the purchasers.

Paragraph 178.3(1)(a) provides that the supply by the direct seller to an independent sales contractor is considered to be made for consideration equal to the suggested retail price of the product in effect at the time the direct seller issues the invoice for the supply.

Paragraph 178.3(1)(b) provides that the independent sales contractor, in effect, ignores purchases from the direct seller of exclusive products for resale. Accordingly, the independent sales contractor is not entitled to claim input tax credits in respect of purchases of exclusive products. Similarly, under paragraph 178.3(1)(c), the contractor is not entitled to a rebate of the tax that the direct seller is required to account for.

Paragraph 178.3(1)(d) provides that the tax calculated on the suggested retail price shall be added to the direct seller's net tax for the reporting period in which the direct seller issues the invoice for the sale of the product.

Paragraph 178.3(1)(e) deems a taxable supply of a service to have been made by the contractor to the direct seller at the time the direct seller issues the invoice for the sale of an exclusive product to the contractor. The consideration for the deemed supply is the suggested retail price of the exclusive product (plus 7%) less the actual consideration given by the contractor for the product. In other words, the contractor, if a registrant, (i.e., not an unregistered small supplier) must collect from the direct seller, and remit, GST on the difference between the suggested retail price and the price the contractor pays. The registered contractor is therefore required to remit only the tax on the contractor's mark-up or commission. The direct seller, in turn, claims an input tax credit for any tax on the contractor's mark-up. On the other hand, if the contractor is an unregistered small supplier, there is no GST consequences to the deemed supply by the contractor to the direct seller.
To illustrate, consider the situation where exclusive products are sold by a direct seller to an independent sales contractor for $60, for resale to a final purchaser for $100 plus $7 GST. Under the alternate collection method, the direct seller will sell to the contractor for $67 ($60 plus the $7 tax on the suggested retail price). Under paragraph 178.3(1)(e), the direct seller is then deemed to have received a supply from the contractor for $40 ($107 less $67). If the contractor is a registrant, the contractor will remit $2.80 GST (7% of $40) and the direct seller will claim $2.80 as an offsetting input tax credit.

Subsection 178.3(2) describes the treatment of the supply of an exclusive product of a direct seller by an independent sales contractor of the direct seller. Under paragraph 178.3(2)(a), if the supply is to another independent sales contractor of the direct seller, the supply is deemed not to have been made to the other contractor and a taxable supply of a service is deemed to have been received from the other contractor for consideration equal to the suggested retail price of the product (plus 7%) less the actual price charged to the other contractor. The effect of the deemed supply is that, if the other contractor is a registrant, that contractor will charge and remit GST on the deemed consideration and the first contractor, if a registrant, will claim an offsetting input tax credit.

Under paragraph 178.3(2)(b), if an independent sales contractor sells exclusive products to a direct seller, the direct seller is deemed to have paid tax on the supply calculated on the suggested retail price of the products at the time of the supply. As a result, if, for example, the direct seller buys inventory back from the independent sales contractor, the direct seller is able to claim an input tax credit for the tax the direct seller remitted on the original sale of the exclusive products to the contractor, assuming the suggested retail price has not changed. Under paragraph 178.3(2)(c), if the independent sales contractor sells the exclusive products to any other person, the supply is deemed to be a taxable supply not by the contractor but by the direct seller. Any tax collected by the contractor is deemed to be tax collected on behalf of the direct seller but is not included in the net tax of the direct seller, since the direct seller will have already accounted for tax on the suggested retail price of the product when the product was first sold to an independent sales contractor.

Section 178.4 Effect of Approval for Distributor

Section 178.4 sets out the rules of the alternate collection method to be used when an approval of a joint application under subsection 178.2(4) by a direct seller and distributor is in effect. The provisions of section 178.4 parallel those in section 178.3 except that it is the distributor, not the direct seller, who remits the GST on the suggested retail price of the product.

Section 178.5 Products Held At Time of Approval

Section 178.5 deals with exclusive products of a direct seller held by registrants who are independent sales contractors of the direct seller in their inventory at the time the direct seller begins or ceases to use the alternate collection method of accounting for GST on the products.

Under subsection 178.5(1), when a direct seller receives approval to use the alternate collection method under section 178.3, registrants who are independent sales contractors of the direct seller must remit GST on all exclusive products held in their inventory at the time the approval takes effect. This tax is calculated on the suggested retail selling prices of those products at that time and the contractors are not entitled to claim input tax credits for the tax. This ensures that GST applies to that inventory of exclusive products since, under the alternate collection method, the independent sales contractors are not required to remit GST on their subsequent sales of the products. Subsection 178.5(2) provides a parallel rule applicable to the inventory of independent sales contractors of a distributor at the time the distributor applies jointly with a direct seller to use the alternate collection method under section 178.4.

The converse rules are set out in subsections 178.5(3) and (4) which deal with the situation where approval to use the alternate collection method is revoked. In this circumstance, registrants who are independent sales contractors are deemed to have paid tax, thereby entitling them to claim input tax credits in respect of exclusive products held in inventory at the time the revocation takes effect.

These amendments to implement the alternate collection method for direct sellers are effective January 1, 1991.

Buying Groups

ETA
178.6

It is common in certain industries for businesses to enter into group purchasing arrangements in order to enable members of the group to obtain the benefit of volume rebates offered by suppliers. Under the typical "buying group" arrangement, a group member sends a purchase order to a supplier (referred to as the "original supplier"). The original supplier sells the goods to an organization (referred to as "the buyer") whose members are the individual businesses that have entered into the arrangement. The buyer, in turn, resells the goods to the individual member for the same price as the buyer paid the original supplier (i.e., the buyer makes a "pass-through supply"). The goods are shipped directly from the original supplier to the ultimate recipient. Without this amendment to the Act, the original supplier would have to account for tax in respect of the supply to the buyer and the buyer would have to account for tax on the supply it makes to the ultimate recipient. However, under typical buying group arrangements, the buyer does not have the necessary information to properly account for the tax in the normal manner since purchase orders, invoices and delivery orders are exchanged directly between the original supplier and ultimate recipients.

Section 178.6 allows qualifying buying groups to ignore, for GST purposes, pass-through supplies. Under this optional method, the supply of the property or service by the buying group is deemed to be a supply from the original supplier to the ultimate recipient.

Subsection 178.6(1) Definitions

Subsection 178.6(1) defines a number of terms which are relevant for purposes of the section.

An "original supplier" is a person who supplies tangible personal property or a service to a buying group which, in turn, resupplies the property or service to a recipient for the same price as the buying group pays for the property or service.

A "pass-through supply" is a supply of tangible personal property or a service made by a buying group to an ultimate recipient for the same price as that charged by the original supplier to the buying group.

The "ultimate recipient" is the person who is the recipient of a pass-through supply of property or a service from a buying group and to whom the property or service is delivered or rendered by the original supplier.

Subsection 178.6(2) Application for Buyer Designation

Subsection 178.6(2) sets out the criteria that must be met in order for a person to be eligible to apply for a designation by the Minister of National Revenue as a "buyer" entitled to use the buying-group method of accounting set out in subsection 178.6(5). All or substantially all of the supplies of property and services made by the person in the ordinary course of the person's business must be pass-through supplies (as defined in subsection 178.6(1)). Each original supplier of a pass-through supply must deliver the property or render the service to an ultimate recipient and the ultimate recipient must pay to the original supplier, on behalf of the buying group, the amount payable as consideration for the supply.

Subsection 178.6(3) Designation as Buyer

Subsection 178.6(3) provides authority for the Minister of National Revenue to approve an application by a buying group for designation as a "buyer" for purposes of section 178.6.

Subsection 178.6(4) Revocation of Designation

Subsection 178.6(4) permits a buyer to request a revocation of a designation previously granted to the buyer and provides authority for the Minister of National Revenue to revoke the designation if the buyer fails to comply with the provisions of Part IX of the Act.

Subsection 178.6(5) Buying Group Method

Subsection 178.6(5) sets out the rules that apply where a buyer designation is in effect. The supply by the original supplier to the buyer is deemed, under paragraph 178.6(5)(a), to be a supply from the original supplier to the ultimate recipient. Accordingly, under paragraph 178.6(5)(b), the buyer is deemed not to have received the supply of property or service from the original supplier and the buyer is deemed not to have supplied the property or service to the ultimate recipient.

Paragraph 178.6(5)(c) deems the consideration paid or payable for the supply to the buyer to be paid or payable by the ultimate recipient. The tax paid or payable in respect of the supply is also deemed to be paid or payable by the ultimate recipient. However, under paragraph 178.6(5)(d), both the buyer and the ultimate recipient are jointly and severally liable for the payment of that tax.

Paragraph 178.6(5)(e) deems any credit or debit note in respect of the supply by the original supplier to the buyer to be received or issued by the buyer on behalf of the ultimate recipient.

The amendments to implement the special method of accounting for buying groups are effective January 1, 1991.

Clause 43

Drop-shipments

ETA
179

Section 179 of the Act is repealed and replaced with new section 179 which sets out a streamlined set of rules for transactions (referred to as "drop-shipments") involving the transfer of goods on behalf of unregistered non-residents.

The overall purpose of section 179 is to ensure that GST applies to goods in Canada that are supplied by an unregistered non-resident person for final consumption in Canada in the same way as tax would apply to the goods if they were, instead, acquired from the non-resident outside Canada and imported for that purpose. To achieve this, subsection 179(1) sets out a general rule that where a registrant transfers physical possession of goods to another person in Canada on behalf of an unregistered non-resident, the registrant is liable to collect tax from the non-resident, generally calculated on the fair market value of the property at that time. Subsections (2) to (6) then provide rules which have the effect of removing the liability under subsection (1) in special circumstances. The latter provisions streamline the GST treatment of drop-shipments for non-residents by generally relieving non-resident suppliers of the obligation to pay tax and shifting a potential liability onto persons who take possession of the goods in Canada in the event that the goods are ultimately used in Canada by a non-registrant or are used in Canada otherwise than in the course of commercial activities. However, as described below, provision is made, through a system of drop-shipment certificates, for registrants to avoid having to account for tax on the goods as long as they are transferring them to other registrants in Canada. To the extent that a registered recipient of property drop-shipped in these circumstances is acquiring the property otherwise than for consumption, use or supply exclusively in the course of commercial activities, the recipient is required to self-assess tax under Division IV of Part IX, pursuant to new paragraph 217(b).

As noted above, the amendments to section 179 introduce a system of drop-shipment certificates for use in these transactions, which will ensure that registrants are aware of their potential liabilities when they acquire physical possession of an unregistered non-resident's property for the purpose of making a supply of a commercial service (as defined in subsection 123(1)) to the non-resident in respect of the property before it is transferred to another person in Canada.

Two drop-shipment scenarios are covered by the rules of Section 179:

(1) Where a registrant supplies tangible personal property to an unregistered non-resident and transfers physical possession of the property to a person in Canada on behalf of the non-resident; and

(2) Where a registrant acquires physical possession of tangible personal property of an unregistered non-resident for the purpose of supplying a commercial service to the non-resident and transfers physical possession of the property to a person in Canada on behalf of the non-resident.

Subsection 179(1) Drop-shipment to Unregistered Person

This subsection requires a registrant making a drop-shipment of tangible personal property (i.e., transferring physical possession of the property) to a person in Canada, on behalf of an unregistered non-resident, to account for tax on the property (i.e., the registrant is treated as having made a taxable supply of the property to the non-resident). However, this general rule does not apply where the supply of the property by the non-resident would be an exempt supply. As well, the general rule is subject to the provisions of subsections 179(2) and (3), under which transactions involving drop-shipments may be relieved from tax.

Specifically, where a registrant transfers physical possession of tangible personal property to a person in Canada on behalf of an unregistered non-resident, the registrant is deemed under subsection 179(1) to have made a taxable supply of the property to the unregistered non-resident for consideration equal to:

- Where the registrant transfers physical possession of the property in Canada to the non-resident or to a third person, the fair market value of the property plus any consideration for a supply of a service made by the registrant to the non-resident in respect of the property that is not included in the fair market value of the property; or

- Where the non-resident has made a supply of the property to a customer for no consideration and physical possession of the property is transferred by the registrant to the customer in Canada on behalf of the non-resident, nil.

These rules ensure that tax is payable in respect of property drop-shipped to consumers and other unregistered persons by Canadian suppliers on behalf of unregistered non-residents. These measures implement the changes to the drop-shipment rules announced in the press releases of March 27, 1991 and September 14, 1992 and are effective January 1, 1991.

Subsection 179(2) Drop-shipment to Registered Person

This subsection streamlines the GST treatment of transactions involving property drop-shipped by a registrant to a registered person in Canada on behalf of an unregistered non-resident, by deeming supplies by registrants to non-residents in these circumstances to be made outside Canada. This subsection also introduces a system of certificates for use in drop-shipment transactions.

Specifically, where a registrant sells tangible personal property to an unregistered non-resident or makes a supply of a commercial service in respect of such property of an unregistered non-resident and the registrant transfers physical possession of the property to a registered person who provides the registrant with a drop-shipment certificate described in paragraph 179(2)(c), the supply by the registrant to the non-resident is deemed to be made outside Canada.

The above-mentioned treatment does not apply to a service of storing or shipping tangible personal property. Therefore, supplies of these services made in Canada remain taxable when supplied to non-residents.

A drop-shipment certificate must indicate the name and registration number of the person to whom physical possession of the property is transferred, acknowledge the transfer of physical possession of the property for purposes of this section and state that the person has acquired possession of the property, either for the purpose of supplying a commercial service in respect of the property or for consumption, use or supply by the person.

This measure relieves unregistered non-residents from having to pay tax on supplies of property or commercial services (other than services of storing or shipping property) made to them in respect of tangible personal property drop-shipped, on their behalf, in Canada to registered persons. This streamlined system for drop-shipments provides non-residents with an alternative to the input tax credit flow-through mechanism for drop-shipments set out in section 180.

The provisions in this subsection, other than the requirement for drop-shipment certificates, were announced in the press release of March 27, 1991 and are effective January 1, 1991. The system of drop-shipment certificates will apply to transactions involving drop-shipments of tangible personal property where physical possession of the property is transferred to a registered person on or after the day that is 30 days after ANNOUNCEMENT DATE. Prior to that effective date, the rules in this section will apply without the requirement for certificates where a registrant transfers physical possession of property to another registered person.

Subsection 179(3) Drop-Shipped Property Subsequently Exported

In accordance with announcements made in the press release of March 27, 1991, effective January 1, 1991, this subsection extends the streamlined rules for transactions involving drop-shipments found in new subsection 179(2) to situations where drop-shipped property of an unregistered non-resident is exported. This subsection also applies to transactions involving drop-shipments of property where delivery is made to a person, other than the non-resident owner, for export. This provision is effective January 1, 1991.

Specifically, new subsection 179(3) ensures that a supply of tangible personal property or the supply of a commercial service in respect of such property (other than a service of storing or shipping property) made by a registrant to an unregistered non-resident is deemed to be made outside Canada where the registrant:

- transfers physical possession of the property to a person at a place outside Canada;

- transfers physical possession of the property to a carrier, or mails the property, for export and delivery outside Canada; or

- transfers physical possession of the property at a place in Canada to a person who will export the property within a reasonable amount of time where, if the registrant had made a supply of the property to the person, the supply would be zero-rated under section 1 of Part V of Schedule VI.

This measure will relieve from tax supplies made to unregistered non-residents in respect of property that is drop-shipped, on their behalf, to persons in Canada for export or exported for delivery outside Canada by the suppliers. This provision will further streamline the rules governing cross-border transactions for unregistered non-residents.

Subsection 179(4) Retention of Possession by Registrant

This subsection extends the streamlined rules for transactions involving drop-shipments, in subsection 179(2), to situations where tangible personal property is sold by a registrant to an unregistered non-resident, but physical possession of the property is retained by the registrant or by another registrant who previously sold the property or performed a commercial service in respect of it.

Specifically, this subsection provides that the sale of tangible personal property to an unregistered non-resident in these circumstances is deemed under subsection 179(2) to be made outside Canada. Accordingly, the sale is relieved of tax. To qualify for this treatment, the registrant retaining physical possession of the property must be doing so for the purpose of:

- transferring physical possession of it to the non-resident owner, a subsequent owner or another person designated by the owner or subsequent owner; or

- supplying a commercial service in respect of the property to the owner or a subsequent owner.

Where these conditions are met, this subsection deems the registrant who sold the property to have transferred physical possession of the property to another registrant. Subsection 179(2), in combination with this provision, treats the sale of the property by the registrant to the non-resident as if it were a supply made outside Canada. Accordingly, the sale is relieved of tax.

This subsection also deems the registrant who retained physical possession of the property in these circumstances to have acquired physical possession of the property for the purpose of making a supply to the non-resident owner of a commercial service in respect of the property. Subsection 179(1), in combination with this provision, effectively places a potential liability on the registrant who retained physical possession of the property if the registrant subsequently transfers physical possession of it to another person.

The rules set out in this subsection expand upon the new streamlined rules for transactions involving drop-shipments, which were announced on March 27, 1991. They are consistent with administrative practice and are effective January 1, 1991. However, for these rules to apply in cases where the transfer of ownership and retention of physical possession takes place more than 29 days after ANNOUNCEMENT DATE, a certificate described in paragraph 179(2)(c) must be given by the registrant who retained possession to the registrant who transferred ownership of the property.

Subsection 179(5) Transfer of Possession to a Carrier or Warehouse

This subsection sets out the treatment of carriers and warehouses under the streamlined drop-shipment rules.

The storage and shipping services supplied by warehouse operators and carriers are generally excluded from the drop-shipment rules by virtue of subsection 179(5). This is consistent with the rules in subsections 179(2) and (3), under which a supply of a service of storing or shipping tangible personal property made in Canada to an unregistered non-resident remains subject to tax.

Specifically, subsection 179(5) deems a warehouse operator or carrier, to whom property of an unregistered non-resident person is transferred by a registrant, not to have acquired physical possession of the property for purposes of the drop-shipment rules. Hence, a registrant transferring physical possession of tangible personal property of an unregistered non-resident to a warehouse or carrier is not required to account for tax on the property under subsection 179(1) by virtue of that transfer.

Rather than physical possession of the goods transferring to the warehouse or carrier in this circumstance, the person to whom the goods are to be released is instead treated as having acquired physical possession of the goods. If the agreement with the warehouse operator or carrier for storing or shipping property identifies the person to whom physical possession of the property is to be transferred by the warehouse operator or carrier, that person is deemed to have acquired physical possession of the property at the same time as the warehouse or carrier. Where that person is not identified until after the property is transferred to the warehouse or carrier, the registrant arranging for the transfer is deemed to retain physical possession of the property until such time as the person to whom the warehouse or carrier is to transfer the property is identified.

For the purposes of the drop-shipment rules, the person who, at any time, has effective control over an unregistered non-resident's goods stored in a warehouse – i.e., the person possessing such documents as would require the warehouse to release the goods to the person if the person so directed – is treated as having physical possession of the goods at that time. If the registrant who has provided a commercial service in respect of the goods or sold the goods to the non-resident provides such documents to the non-resident owner, tax would normally apply, by virtue of subsection 179(1), on the supply of the service or goods to the non-resident. However, notwithstanding the fact that warehouse operators are generally treated as not taking physical possession of goods drop-shipped in these circumstances, the warehouse can provide a drop-shipment certificate to the registrant and thereby relieve from tax the supply by the registrant to the unregistered non-resident – i.e., the warehouse is treated as having taken physical possession of the goods for the purposes of the drop-shipment rules.

Importantly, the issuance of a drop-shipment certificate by a warehouse operator does not relieve from tax a supply of the warehouse's storage services. Moreover, pursuant to subsection 179(1), a potential liability is placed on the warehouse operator who has issued a certificate if physical possession of the property is subsequently transferred by the warehouse operator to another person.

The measures in this subsection further refine the rules for transactions involving drop-shipments, which were announced in the press release of March 27, 1991. As indicated in that press release, the rules in this subsection apply to carriers as of January 1, 1991. The press release of September 14, 1992 indicated that these rules, including the system of certificates, would be extended to warehouses on and after the day that is 30 days after ANNOUNCEMENT DATE. Prior to this latter effective date, warehouses are treated in the same manner as other registrants.

Subsection 179(6) Transfer by Non-Resident to Warehouse or Carrier

This subsection further clarifies the treatment of carriers under the new streamlined drop-shipment rules, effective January 1, 1991. Where an unregistered non-resident transfers physical possession of tangible personal property to a carrier for the sole purpose of shipping the property, pursuant to subsection 179(5), the carrier is deemed not to have taken physical possession of the property for purposes of the drop-shipment rules.

Effective on the day that is 30 days after ANNOUNCEMENT DATE, this treatment will extend to warehouses where they do not claim an input tax credit, under subsection 169(2) or pursuant to section 180, in respect of the acquisition or importation of tangible personal property transferred to them by an unregistered non-resident. On the other hand, warehouses may choose to have the streamlined drop-shipment rules apply to them by claiming the credit in these circumstances. Where a warehouse claims an input tax credit in these circumstances, the warehouse is considered to have taken physical possession of the property for the purposes of the drop-shipment rules and thereby faces a potential liability if and when the warehouse subsequently transfers physical possession of the property to another person on behalf of the non-resident. In all cases, warehouses' storage services will remain subject to tax.

Transactions Before March 28, 1991

Although the streamlined rules in section 179 for transactions involving drop-shipments are generally effective January 1, 1991, they were not announced until March 27, 1991. In the intervening period, registrants may have been deemed to have collected tax on the basis of the old rules and included that tax in their net tax calculation. Where this is the case, the old rules will continue to apply to those transactions.

Clause 44

Transfer of Property From Non-Resident to Registrant

ETA
180

This section deals with situations where tax is imposed on goods that are acquired by a registrant and that have been drop-shipped in Canada (i.e., in circumstances in which subsection 179(1) applies) or imported but the tax is paid by an unregistered non-resident person who cannot claim an input tax credit in respect of the tax. The section, in effect, provides for a flow-through of the input tax credit from the unregistered non-resident to the registrant.

The amendment implements a number of technical changes to ensure that the rules in this section are consistent with the amended rules for drop-shipments in section 179. Section 180 is intended to provide an alternative mechanism for registrants to recover tax paid by unregistered non-residents on goods that ultimately are acquired by registrants for consumption, use or supply in the course of a commercial activity or for the purpose of supplying a commercial service in respect of the goods.

This amendment is effective January 1, 1991.

Clause 45

Discount Coupons

ETA
181

Amended section 181 incorporates a number of changes to the GST treatment of coupons which are designed to streamline the operation of the tax for retailers who accept discount coupons. These changes were announced in the press releases of October 17, 1990, December 18, 1990 and March 27, 1991.

Section 181 provides that where a reimbursable coupon is given as full or partial payment for the supply of property or a service, tax is payable on the price of the property or service before any deduction of the coupon value. In these cases, the issuer of the coupon is able to claim an input tax credit equal to 7\107ths of the face value of the coupon, thereby allowing the issuer, in effect, to gross up the face value of coupons by 7% – the amount of the GST. Non-reimbursable coupons – eg. coupons issued by a retailer – can be treated either as a reimbursable coupon or simply as a reduction of the price of the good or service provided.

Subsection 181(1) Meaning of "coupon"

This subsection defines the term "coupon", for purposes of section 181, to include the same devices as those to which existing sections 157 and 181 apply, namely any voucher, ticket or similar device that may be exchanged for a property or service or that entitles the purchaser thereof to a reduction of the purchase price of property or a service.

Subsection 181(2) Acceptance of Reimbursable Coupon

This subsection applies to coupons that entitle holders to a reduction of the purchase price of goods or services which are taxable at 7% equal to a fixed dollar amount specified in the coupon, where the vendor can expect to be reimbursed by a third party (e.g., the manufacturer of the goods) for accepting the coupon.

Paragraph 181(2)(a) provides that where a vendor accepts a reimbursable fixed dollar value coupon as full or partial payment for a supply of property or a service, the tax the vendor is required to include in the vendor's net tax is calculated on the full sale price, before deducting the coupon value. Paragraph 181(2)(b) provides that, at the time the vendor accepts the coupon, the vendor is considered to have collected a portion of that total tax equal to 7/107ths of the face value of the coupon. Therefore, 7/107ths of the coupon value must be included in the vendor's net tax for the reporting period in which the coupon is accepted, regardless of when the remainder of the tax on the supply becomes payable under the rules of section 168.

Paragraph 181(2)(c) deems the tax payable by the purchaser in respect of the supply to be the difference between 7% of the purchase price (before the reduction) and 7\107ths of the coupon value. As a result, any input tax credit or rebate claimable by the purchaser in respect of the supply is based on the tax on the full sale price less 7\107ths of the value of the coupon.

The rules of subsection 181(2) do not apply for purposes of subsection 223(1), which sets out requirements regarding disclosure of tax. As a result, the tax payable by the purchaser for purposes of the disclosure requirements is the tax calculated on the consideration for the supply without reference to the coupon. Vendors will therefore be able to comply with the disclosure requirements without having to separate, at the point of sale, coupons for taxable items from those for tax-free items.

Subsection 181(3) Acceptance of Non-Reimbursable Coupons

This subsection applies to coupons that entitle the holders to a reduction of the purchase price of goods or services which are taxable at 7% equal to a fixed dollar amount specified in the coupon, where the vendor does not expect to be reimbursed by a third party for accepting the coupon.

The vendor in this case has the option of treating the coupon as if it were a reimbursable coupon, and therefore subject to the rules set out in subsection 181(2), or as a reduction in the consideration for the supply and subject to the rules set out in subsection 181(4). If the vendor treats the coupon as a reimbursable coupon, the vendor will calculate the GST payable on the supply before deducting the value of the coupon and will be entitled to claim an input tax credit equal to 7\107ths of the face value of the coupon.

Subsection 181(4) Acceptance of Other Coupons

This subsection applies to all coupons (whether reimbursable or non-reimbursable) that do not entitle the holder to a reduction of the purchase price of goods or services equal to a fixed dollar amount specified in the coupon. These coupons are, in all cases, treated as reducing the value of the consideration, with the GST applying to the price net of the coupon value.

Subsection 181(5) Redemption of Coupons

A vendor who accepts a reimbursable coupon from a customer usually has the coupon redeemed by a manufacturer or other third party for an amount equal to the total of the face value of the coupon and an amount to cover handling costs. Subsection 181(5) treats the redemption value, including the handling charge, as not being consideration for a supply. As such, these amounts do not attract GST. Also, since the redemption of the coupon is not considered to be a financial service, it does not affect either party's ability to claim input tax credits.

Subsection 181(5) also entitles the issuer of a reimbursable, fixed dollar value coupon to claim an input tax credit equal to 7\107ths of that value when the issuer redeems the coupon from the vendor. By allowing the issuer an input tax credit, subsection 181(5) ensures that the correct overall net amount of GST is remitted to the government in respect of the supply by the vendor. This input tax credit is available to the issuer only if the reimbursement to the vendor was not given by way of a credit or debit note pursuant to section 232.

Registrants who are prescribed for purposes of subsection 188(5) (i.e., provincial lottery corporations) are specifically excluded from the operation of paragraph 188(5)(b). They are therefore not entitled to claim the input tax credit which is available under that paragraph to issuers of reimbursable coupons. Also, it should be noted that subsection 181(5) only applies where the person who redeems the coupon from the vendor does so in the course of a commercial activity of the person.

These amendments to section 181 are effective January 1, 1991.

Subsection 181.1 Rebates

New section 181.1 deals with rebates, in respect of goods or services taxable at the rate of 7%, offered directly to a customer acquiring the goods or services from the manufacturer or other vendor. Section 181.1 adopts the rules which are set out in existing subsection 181(2). The differences in the wording of section 181.1, as it will apply to rebates paid before 1993, and existing subsection 181(2) reflect strictly technical changes that ensure that the terminology and structure of the new section is consistent with the rest of Part IX of the Act.

Section 181.1 is further amended, with respect to rebates paid after 1992, to limit the application of the section to cases where the issuer of the rebate provides written notification with the rebate that it includes an amount on account of GST. This will enable rebate recipients to more readily ascertain whether they have an obligation, by virtue of paragraph 181.1(f), to add the amount of the rebate which is on account of GST to their net tax to the extent that they claimed an input tax credit for that amount in a preceding period. If there is no indication that a portion of the rebate is a refund of tax, the recipient can ignore the rebate for GST purposes. From the issuer's standpoint, the notification requirement effectively makes the rules of section 181.1 optional in that the issuer can choose to forego input tax credits in respect of the rebates simply by not indicating that a portion of the rebate is on account of GST.

Subsection 181.2 Gift Certificates

Section 181.2 sets out the rules that apply to gift certificates and is intended to achieve the same result as existing subsection 157(2) which is repealed, consequential to this amendment. The changes to the provision are strictly technical which ensure that the terminology used is consistent with the rest of Part IX of the Act.

New section 181.2 is effective January 1, 1991.

Section 182 Forfeitures, Damage Claims, etc.

Section 182 deals with the situation where, as a consequence of the breach, modification or cancellation of an agreement for the making of a taxable supply, amounts are paid or forfeited by a person to a registrant otherwise than as consideration for the supply. The section also deals with situations where a debt or other obligation of a registrant to a person is reduced or extinguished without payment on account of the debt or obligation. In both cases, the registrant is treated as having made a taxable supply to the other person and as having collected tax equal to 7/107ths of the amount paid or forfeited. The person paying or forfeiting the amount is deemed to have paid tax and, if a registrant, is entitled to an input tax credit for that tax.

New subsection 182(1) parallels existing paragraph 182(a). As announced in the press release of December 18, 1990, amended section 182 does not apply to amounts paid or forfeited by a supplier to a recipient. As well, subsection 182(1) is amended so that it does not apply where the breach, modification or termination of the agreement occurred prior to 1991.

New subsection 182(2) parallels existing paragraph 182(b) except that it does not apply where the breach, modification or termination of the agreement occurred before 1991.

New subsection 182(3) sets out a number of exclusions to the application of section 182 which were announced in the press release of December 18, 1990. Specifically, paragraph 182(3)(a) excludes late payment penalties to which section 161 applies while paragraph 182(3)(b) excludes payments made by one railway company to another as penalties for failing to return rolling stock on time. Paragraph 182(3)(c) excludes payments made as or on account of demurrage (i.e., penalties for delays in loading or unloading vessels or railway cars).

These amendments to section 182 are effective January 1, 1991.

Clause 46

Seizures and Repossessions

ETA
183

Section 183 provides rules for the GST treatment of seizures and repossessions. The amendments to this section implement announcements in the March 27, 1991 and November 5, 1991 press releases and restructure the section to accommodate the new provisions.

Subsection 183(1) Seizure and repossession

The amendments to subsection 183(1) ensure that the seizure and repossession rules will not apply to leased property that is seized or repossessed from the lessee or to property that is seized or repossessed before 1991. This amendment was announced in the November 5, 1991 press release and is effective January 1, 1991.

As announced in the March 27, 1991 press release, this subsection is further amended in subclause 46(2) to add paragraphs (c) and (d) which, read together with sections 193 and 257, ensure that a person from whom real property is seized or repossessed after March 27, 1991 will be eligible for an input tax credit or rebate equal to the lesser of 7% of the fair market value of the property at the time of seizure or repossession, and the total of the tax payable in respect of the acquisition of the real property, and improvements thereto, in excess of input tax credits and rebates to which the person was previously entitled. This removes tax embedded in the value of the property so that the property is not subject to double tax – i.e., when the debtor originally purchased it and when the creditor resupplies it on a taxable basis after the seizure or repossession. As a consequence of these changes, subsections 183(7) and (8), which provide a credit to the seizer or repossessor at the time the property is resold, are amended with respect to property seized or repossessed after March 27, 1991, apply only to personal property. With respect to real property seized or repossessed before March 28, 1991, any tax on the property that was not previously recovered by the debtor is removed by providing a credit to the seizer or repossessor under new subsection 183(7) which replaces existing subsection 183(5).

Subsection 183(2) Supply in Commercial Activity

Amendments to subsection 183(2) provide that where seized or repossessed property has been appropriated for own use (hence the creditor has accounted for GST on the property), any subsequent supply of the property by the creditor will be governed by the normal rules for determining if the supply is in the course of a commercial activity and therefore taxable.

This amendment is effective January 1, 1991.

Subsection 183(3) Court Seizures

Existing subsection 183(4) is renumbered as new subsection 183(3). This amendment is effective January 1, 1991.

Subsection 183(4) Use of Real Property

Existing subsection 183(3) is renumbered as new subsection 183(4) and amended so as to apply only to real property (personal property is dealt with under new subsections 183(5) and (6)). This amendment is effective January 1, 1991.

New subsection 183(4) deems a supply to be made and, except where that supply is an exempt supply, tax to be paid and collected by a GST-registered creditor where real property is seized or repossessed by the creditor and appropriated for the creditor's own use. This ensures that the creditor will have to remit GST on the property to the extent that the property is not used in commercial activities. However, if the property is used exclusively in commercial activities, the creditor will be able to claim a full input tax credit for the tax the creditor is deemed to have collected, resulting in no net tax remittance in respect of the appropriation.

Subsection 183(5) Use of Personal Property Seized Before 1994

As announced in the press release of November 5, 1991, new subsection 183(5) provides rules applicable to personal property that is seized or repossessed prior to 1994 and is subsequently appropriated for own use. This subsection provides that a creditor is deemed to have received a supply of the seized or repossessed personal property immediately before appropriation for own use. The creditor is deemed to have paid and collected tax on that supply only if the personal property was seized or repossessed in Canada from a person who would have had to charge tax if the personal property had instead been supplied by the person to the creditor.

This amendment is effective January 1, 1991.

Subsection 183(6) Use of Personal Property Seized After 1993

As announced in the press release of November 5, 1991, new subsection 183(6) provides the rules applicable to personal property that is seized or repossessed after 1993 and is subsequently appropriated for own use. This subsection provides that a creditor is deemed to have received a supply of the seized or repossessed personal property immediately before appropriation for own use and to have paid tax on the supply equal to the tax fraction of the fair market value of the personal property at the time the personal property was seized or repossessed. The creditor is deemed to have collected tax on that supply equal to the tax fraction of the fair market value of the personal property at the time the personal property was seized or repossessed only if the personal property was seized or repossessed in Canada from a person who would have had to charge tax if the personal property had instead been supplied by the person to the creditor. This amendment is effective January 1, 1991.

Subsections 183(5) and (6) will also provide that where, after ANNOUNCEMENT DATE, a creditor appropriates for the creditor's own use, certain specified tangible personal property (e.g., artwork) that was seized or repossessed by the creditor, the creditor will be deemed to have acquired the property for use, and to use it at all times thereafter until it is disposed of by the creditor, exclusively in non-commercial activities. As a result, specified tangible personal property that is seized or repossessed will be treated the same as such property that is acquired by way of purchase.

Subsection 183(7) Sale of Property

Existing subsection 183(5) is renumbered as new subsection 183(7).

Existing subsection 183(5) provides that where a creditor makes a taxable supply of property that was seized or repossessed by the creditor, the creditor is deemed to have, immediately before that supply, acquired the property and to have paid tax calculated on the consideration for the supply, provided that the person from whom the property was seized or repossessed did not, and is not entitled to, claim an input tax credit or rebate in respect of the property. As announced in the November 5, 1991 press release, new subsection 183(7), as set out in subclause 46(1), provides that the amount of tax the creditor is deemed to have paid in these circumstances is equal to the tax calculated on the consideration for the supply less the total of all input tax credits and rebates claimed in respect of the property and improvements to the property. The effect of this amendment is that any input tax credits or rebates claimed by the creditor in respect of the property subsequent to its seizure or repossession (e.g., for an improvement to the property) cannot, in effect, be claimed again by virtue of this subsection.

In addition, the subsection is amended so as not to apply to seized or repossessed property that, prior to being sold, was appropriated for own use by the creditor or was supplied by way of lease by the creditor.

These amendments are effective as of January 1, 1991.

Subsection 183(7) is also amended, by subclause 46(3), to apply only to personal property. This amendment is consequential to changes to subsection 183(1) under subclause 46(2) whereby, in the case of seizures or repossessions of real property, the person from whom the real property is acquired is allowed to claim an input credit or rebate for unrecovered tax embedded in the property. This eliminates any need for the creditor to claim a credit in these situations. This change is effective for property seized or repossessed after March 27, 1991.

Under the existing subsection 183(7), tax is deemed to have been paid by a creditor where the person from whom the property was seized or repossessed was not entitled to claim an input tax credit or rebate. The intent of this provision is to allow the creditor a credit for GST embedded in the property. However, the wording of the existing provision would also permit a credit to be claimed on pre-1991 property seized or repossessed from a registrant who was using the property in commercial activities. As announced in the March 27, 1991 press release, this provision is amended by subclause 46(3) to limit its application – and therefore, the availability of the credit – to situations where the person from whom the property is seized or repossessed would not have had to collect tax had the person instead supplied the property (e.g., a consumer). This change is effective for property seized or repossessed after March 27, 1991.

As announced in the March 27, 1991 and November 5, 1991 press releases, in contrast to existing subsection 183(7), new subsection 183(7) does not apply – and hence, no input tax credit may be claimed – where seized or repossessed property is supplied by way of sale outside Canada or on a zero-rated basis and was either seized or repossessed before 1994, or is used specified tangible personal property that, at the time of supply, had a fair market value exceeding the prescribed amount under subsection 176(2).

This amendment is applicable to property that was seized or repossessed after March 27, 1991.

Subsection 183(8) Lease of Property

As announced in the November 5, 1991 press release, new subsection 183(8), as set out in subclause 46(1), clarifies the treatment of property that is leased by a creditor after the property has been seized or repossessed. Under this subsection, the creditor is deemed to have acquired the property immediately before the property is leased, and to have paid tax on that deemed acquisition equal to 7% of the fair market value of the property at the time it was seized or repossessed. Under the existing rules, the value on which the creditor is deemed to have paid tax is the value of the lease payments. This subsection applies only to seized or repossessed property that is supplied by way of lease, license or similar arrangement by a creditor who seized or repossessed the property from a person and the creditor would have paid tax on the property had the property instead been purchased from the person. These rules will not apply where the seized or repossessed property is supplied outside Canada or on a zero-rated basis and was either: seized or repossessed before 1994, or is used specified tangible personal property that, at the time of supply, had a fair market value exceeding the prescribed amount under subsection 176(2). In addition, these rules will not apply to seized or repossessed property that, prior to being leased, was appropriated for the creditor's own use.

This amendment is effective as of January 1, 1991.

New subsection 183(8) is further amended, by subclause 46(4), to apply only to leases of personal, no opposed to real, property. This is consistent with the change to subsection 183(7) described above and applies to property seized or repossessed after March 27, 1991.

Subsection 183(9) Voluntary Transfer

As announced in the November 5, 1991 press release, new subsection 183(9), as set out in subclause 46(5), provides that where a person voluntarily transfers property to a creditor in order to satisfy a debt or other obligation in respect of which the person is in default, the creditor is deemed to have acquired the property by way of seizure or repossession.

This amendment is applicable to voluntary transfers of property executed on or after November 5, 1991.

Subsection 183(10) Debt Security

New subsection 183(10), as set out in subclause 46(6), clarifies that powers of sale and other similar rights exercisable under a debt security will be treated as seizures and repossessions. This amendment is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 47

Supply to Insurer

ETA
184

Section 184 provides rules for the GST treatment of property transferred to an insurer in the course of settling an insurance claim. The amendments to this section implement announcements in the March 27, 1991 and November 5, 1991 press releases and restructure the section to accommodate the new provisions.

Subsection 184(1) Supply to Insurer on Settlement of Claim

The amendments to subsection 184(1) ensure that these rules will not apply to property that is transferred before 1991. This amendment was announced in the November 5, 1991 press release and is effective January 1, 1991.

As announced in the March 27, 1991 press release, this subsection is further amended in subclause 47(2) to add paragraphs (c) and (d) which, read together with sections 193 and 257, ensure that a person from whom real property is transferred after March 27, 1991 will be eligible for an input tax credit or rebate equal to the lesser of 7% of the fair market value of the property at the time of transfer, and the total of the tax payable in respect of the acquisition of the real property, and improvements thereto, in excess of input tax credits and rebates to which the person was previously entitled. This removes tax embedded in the value of the property so that the property is not subject to double tax – i.e., when the person originally purchased it and when the insurer resupplies it on a taxable basis after the transfer. As a consequence of these changes, subsections 184(6) and (7), which provide a credit to the insurer at the time the property is resold, are amended with respect to property transferred after March 27, 1991, to apply only to personal property. With respect to real property transferred before

March 28, 1991, any tax on the property that was not previously recovered by the insured is removed by providing a credit to the insurer under new subsection 184(6), which replaces existing subsection 184(4).

Subsection 184(2) Supply in Commercial Activity

Amendments to subsection 184(2) provide that where transferred property has been appropriated for own use (hence the insurer has accounted for GST on the property), any subsequent supply of the property by the insurer will be governed by the normal rules for determining if the supply is in the course of a commercial activity and therefore taxable.

This amendment is effective January 1, 1991.

Subsection 184(3) Use of Real Property

Existing subsection 184(3) is amended so as to apply only to real property (personal property is dealt with under new subsections 184(4) and (5)). This amendment is effective January 1, 1991.

New subsection 184(4) deems a supply to be made and, except where that supply is an exempt supply, tax to be paid and collected by an insurer where real property is transferred to the insurer and appropriated for the insurer's own use. This ensures that the insurer will have to remit GST on the property to the extent that the property is not used in commercial activities. However, if the property is used exclusively in commercial activities, the insurer will be able to claim a full input tax credit for the tax the insurer is deemed to have collected, resulting in no net tax remittance in respect of the appropriation.

Subsection 184(4) Use of Personal Property Transferred Before 1994

As announced in the press release of November 5, 1991, new subsection 184(4) provides rules applicable to personal property that is transferred before 1994 and is subsequently appropriated for own use. This subsection provides that an insurer is deemed to have received a supply of the transferred personal property immediately before appropriation for own use. The insurer is deemed to have paid and collected tax on that supply only if the personal property was transferred in Canada from a person who would have had to charge tax if the personal property had instead been supplied by the person to the insurer.

This amendment is effective January 1, 1991.

Subsection 184(5) Use of Personal Property Transferred After 1993

As announced in the press release of November 5, 1991, new subsection 184(5) provides the rules applicable to personal property that is transferred after 1993 and is subsequently appropriated for own use. This subsection provides that an insurer is deemed to have received a supply of the transferred personal property immediately before appropriation for own use and to have paid tax on the supply equal to the tax fraction of the fair market value of the personal property at the time the personal property was transferred. The insurer is deemed to have collected tax on that supply equal to the tax fraction of the fair market value of the personal property at the time the personal property was transferred only if the property was transferred in Canada from a person who would have had to charge tax if the personal property had instead been supplied by the person to the creditor. This amendment is effective January 1, 1991.

Subsections 184(4) and (5) will also provide that where, after ANNOUNCEMENT DATE, an insurer appropriates for the insurer's own use, certain specified tangible personal property (e.g., artwork) that was transferred to the insurer, the insurer will be deemed to have acquired the property for use, and to use it at all times thereafter until it is disposed of by the insurer, exclusively in non-commercial activities. As a result, specified tangible personal property that is transferred will be treated the same as such property that is acquired by way of purchase.

Subsection 184(6) Sale of Property

Existing subsection 184(4) is renumbered as new subsection 184(6).

Existing subsection 184(4) provides that where an insurer makes a taxable supply of property that was transferred to the insurer, the insurer is deemed to have, immediately before that supply, acquired the property and to have paid tax calculated on the consideration for the supply, provided that the person from whom the property was transferred did not, and is not entitled to, claim an input tax credit or rebate in respect of the property. As announced in the November 5, 1991 press release, new subsection 184(6), as set out in subclause 47(1), provides that the amount of tax the insurer is deemed to have paid in these circumstances is equal to the tax calculated on the consideration for the supply less the total of all input tax credits and rebates claimed in respect of the property and improvements to the property. The effect of this amendment is that any input tax credits or rebates claimed by the insurer in respect of the property subsequent to its transfer (e.g., for an improvement to the property) cannot, in effect, be claimed again by virtue of this subsection.

In addition, the subsection is amended so as not to apply to transferred property that, prior to being sold, was appropriated for own use by the insurer or was supplied by way of lease by the insurer.

These amendments are effective as of January 1, 1991.

Subsection 184(6) is also amended, by subclause 47(3), to apply only to personal property. This amendment is consequential to changes to subsection 184(1) under subclause 47(2) whereby, in the case of transfers of real property, the person from whom the real property is acquired is allowed to claim an input credit or rebate for unrecovered tax embedded in the property. This eliminates any need for the insurer to claim a credit in these situations. This change is effective for property transferred after March 27, 1991.

Under the existing subsection 184(6), tax is deemed to have been paid by an insurer where the person from whom the property was transferred was not entitled to claim an input tax credit or rebate. The intent of this provision is to allow the insurer a credit for GST embedded in the property. However, the wording of the existing provision would also permit a credit to be claimed on pre-1991 property transferred from a registrant who was using the property in commercial activities. As announced in the March 27, 1991 press release, this provision is amended by subclause 47(3) to limit its application – and therefore, the availability of the credit – to situations where the person from whom the property is transferred would not have had to collect tax had the person instead supplied the property (e.g., a consumer). This change is effective for property transferred after March 27, 1991.

As announced in the March 27, 1991 and November 5, 1991 press releases, in contrast to existing subsection 184(6), new subsection 184(6) does not apply – and hence, no input tax credit may be claimed – where transferred property is supplied by way of sale outside Canada or on a zero-rated basis and was either transferred before 1994, or is used specified tangible personal property that, at the time of supply, had a fair market value exceeding the prescribed amount under subsection 176(2).

This amendment is applicable to property that was transferred after March 27, 1991.

Subsection 184(7) Lease of Property

As announced in the November 5, 1991 press release, new subsection 184(7), as set out in subclause 47(1), clarifies the treatment of property that is leased by a insurer after the property has been transferred. Under this subsection, the insurer is deemed to have acquired the property immediately before the property is leased, and to have paid tax on that deemed acquisition equal to 7% of the fair market value of the property at the time it was transferred. Under the existing rules, the value on which the insurer is deemed to have paid tax is the value of the lease payments. This subsection applies only to transferred property that was transferred to an insurer by a person and is supplied by way of lease, license or similar arrangement by the insurer, and the insurer would have paid tax on the property had the property instead been purchased from the person. These rules will not apply where the transferred property is supplied outside Canada or on a zero-rated basis and was either transferred before 1994, or is used specified tangible personal property that, at the time of supply, had a fair market value exceeding the prescribed amount under subsection 176(2). In addition, these rules will not apply to transferred property that, prior to being leased, was appropriated for the insurer's own use.

This amendment is effective as of January 1, 1991.

New subsection 184(7) is further amended, by subclause 47(4), to apply only to leases of personal property. This is consistent with the change to subsection 184(6) described above and applies to property transferred after March 27, 1991.

Clause 48

Holding Companies

ETA
186

Section 186 sets out rules designed to enable registrants investing in related corporations that are engaged in commercial activities to claim input tax credits in respect of the costs of acquiring or owning the shares or indebtedness of those corporations or related holding companies.

Subclause 48(1)

ETA
186(1)

Subsection 186(1) applies to registered Canadian corporations (referred to as "parent" corporations) that acquire or hold shares or indebtedness of related corporations where the related corporations acquired or imported all or substantially all of their property for consumption, use or supply in the course of commercial activities. The effect of the deeming provisions under this subsection is that a parent corporation in this situation is entitled to claim input tax credits in respect of tax on property or services that are acquired or imported for consumption or use by the parent in relation to the shares or indebtedness of the related corporation.

This input tax credit entitlement is provided for, under existing paragraph 186(1)(d), by deeming the shares and indebtedness to be property of the parent that was used by it exclusively in the course of its commercial activities. The presumption underlying the provision is that if the property is used exclusively in commercial activities, the expenses associated with the holding of that property are incurred in the course of a commercial activity and are thus eligible for input tax credits. New subsection 186(1) achieves the same result more directly by providing that, for the purposes of determining an input tax credit of the parent, to the extent that the parent acquires or imports property or a service for consumption or use in relation to the shares or indebtedness, the parent is considered to have acquired or imported that property or service for use in the course of commercial activities.

There are also two timing issues addressed in the amendments to subsection 186(1). First, under the amended subsection, it is the time at which tax becomes payable or is paid by the parent in respect of the property and services for which a credit is sought that the related corporation must satisfy the condition that all or substantially all of its property must be property acquired or imported for consumption, use or supply in the course of its commercial activities. The existing subsection requires that this condition be satisfied at all times at which the shares or indebtedness are held by the parent in the year the property or services are acquired.

Second, under new subsection 186(1), the input tax credit in respect of the property or service may be claimed for the reporting period of the parent in which the tax became payable or was paid without having become payable – i.e., according to the normal rules for claiming input tax credits. This will allow parent corporations to claim the credit sooner than they would be entitled to do so under the existing rules which generally deem the tax to have become payable and to have been paid at the end of the fiscal year of the parent in which the property or service was acquired.

These amendments to subsection 186(1) apply to property and services acquired or imported by a parent corporation for consumption or use in relation to the shares or indebtedness of a related corporation where the tax in respect of the acquisition or importation becomes payable or is paid without having become payable after ANNOUNCEMENT DATE. It should be noted, however, that because of clause 188, where tax is paid or becomes payable by a parent corporation on such property or services on or before ANNOUNCEMENT DATE in a fiscal year of the parent ending after that date, the input tax credit for that tax can be claimed for the first reporting period of the parent ending after that date.

Another transitional provision relating to subsection 186(1) is set out in subclause 48(4). This provision, in effect, permits persons to claim input tax credits for the investment-related costs covered by subsection 186(1) incurred by them before they register pursuant to new paragraph 240(3)(d) (i.e., in cases where they would not otherwise be permitted to register because they are not engaged in commercial activities). This entitlement exists as long as the corporation applies for registration not later than 60 days after that paragraph is enacted.

Subclauses 48(2) and (3)

ETA
186(3)

Existing subsection 186(3) provides that where a parent corporation holds shares or indebtedness of a related corporation and all or substantially all of the property of the related corporation was acquired or imported for consumption, use or supply in the course of its commercial activities, those shares and that indebtedness is deemed to be property that was acquired by the parent for use exclusively in commercial activities. Read together, subsections 186(1) to (3) generally have the effect of enabling a parent corporation that owns an operating company through a holding company to claim input tax credits for expenses related to its investment in the stock and debt of the holding company (provided, of course, that the operating company meets the other conditions set out in those subsections). However, because existing subsection 186(3) applies only for purposes of subsections 186(1) and (2), its application does not extend to parent holding companies that own an operating company through a chain of holding companies. Amended subsection 186(3) applies for purposes of all of section 186 and therefore will enable the parent company in these circumstances to benefit from the rules of that section. This amendment is effective January 1, 1991.

Subclause 48(4)

The rules of section 186, entitling parent corporations to input tax credits for certain property and services, apply only to such corporations that are registrants. In many cases, special holding companies or "take-over" companies are established solely for the purpose of acquiring and/or holding those shares or that indebtedness and are not otherwise engaged in commercial activities. As such, they would not be entitled to become registrants. This situation is rectified by allowing corporations in these circumstances to register under amended subsection 240(3). However, that amendment to subsection 240(3) is effective only on the day on which it is enacted. The purpose of subclause 48(4) is to enable holding corporations and corporations established for the purpose of acquiring shares or indebtedness of another corporation to avail themselves of the relief provided under section 186 as if they were registrants as of January 1, 1991. In other words, after registering under subsection 240(3), these corporations will be able to claim input tax credits for tax that became payable or was paid before that time on property and services acquired or imported by them for consumption or use in the circumstances set out in subclause 48(4). However, subclause 48(4) will apply only to corporations resident in Canada who apply to be registered under subsection 240(3) within 60 days after the amendment to that subsection is given Royal Assent.

Clause 49

Government Fees

ETA
189.1

New section 189.1 exempts fees charged by a government or municipality, or by a board, commission or other body established by a government or municipality, to persons who hold rights (such as licences, permits, quotas or similar rights) that are supplied by a government or municipality or by a board, commission or other body established by a government or municipality, where the explicit purpose of the fee is to recover the costs of administering regulatory programs relating to those rights. For example, this section would exempt cost-recovery fees charged by the National Energy Board to its licensees.

This amendment is effective January 1, 1991 pursuant to the press release of March 27, 1991.

Foreign Conventions

ETA
189.2

New section 189.2 deals with supplies by a sponsor of a foreign convention (within the meaning assigned by subsection 123(1)) of admissions to, or exhibition space at, the foreign convention. By treating these supplies as having been made otherwise than in the course of a commercial activity of the sponsor, the section ensures that sponsors of foreign conventions are not required to register for GST purposes by virtue of holding a convention in Canada, are not required to charge tax on their supplies of admissions to the convention and are not entitled to claim input tax credits for related expenses. However, the sponsor is entitled to a rebate, under new section 252.4, for the tax paid on the convention facility and related convention supplies (as defined in subsection 123(1)).

This measure is intended to ensure that Canada's convention industry remains internationally competitive and to streamline the operation of the tax for foreign organizations holding conventions in Canada. These changes were announced in the press release of December 18, 1990 and are effective January 1, 1991.

Clause 50

Real Property

ETA
190

Section 190 deals with situations where real property is converted for use, or begins to be used, for residential purposes.

Subclause 50(1)

Conversion to Residential Use

ETA
190(1)(a)(i)

Subsection 190(1) applies where a person converts commercial real property into a residential complex without constructing or substantially renovating the complex. Essentially, the person is treated as a builder who has substantially renovated the complex. This triggers the application of the self-supply rules under section 191 and the rules for the GST New Housing Rebate under sections 254 and 256.

Since the provisions of Part IX dealing with acquisitions of real property can apply more than once to the same property – i.e., at the time of the actual acquisition and at the time of a deemed acquisition, such as occurs under the change-in-use rules – the amendment to subparagraph 190(1)(a)(i) clarifies that the referenced acquisition is the last acquisition of the property.

This amendment is effective January 1, 1991.

Subclause 50(2)

ETA
190(1)(f)

Paragraph 190(1)(f) provides that, in circumstances where subsection 190(1) applies, a person who converts real property into a residential complex is deemed to be a builder. The amendment excludes from the application of the paragraph, an individual who converts commercial real property to personal residential use otherwise than in the course of a commercial activity. As a result, the individual is not a builder and the property is not subject to tax if the individual resells the property without occupying it. However, the individual remains eligible for the GST New Housing Rebate.

This amendment is effective January 1, 1991.

Subclause 50(3)

ETA
190(3), (4) and (5)

New subsection 190(3) requires a supplier who leases land that is exempt under paragraph 6.1(a) or 7(a) of Part I of Schedule V to "self-supply" the property – i.e., the supplier is treated as having sold and re-acquired the land and is required to account for GST on the fair market value of the land.

Subsection 190(3) does not apply if, as a result of leasing the land, the supplier is required to account for tax under the change-in-use rules in Subdivision d of Division II of Part IX. The subsection also does not apply if the supplier had, immediately before the current lease, made an exempt supply of the land by way of lease under paragraph 6.1(a) or 7(a) of Part I of Schedule V – i.e., where there is a new lessee under a new lease but the use of the land has not changed. Finally, the subsection does not apply to the supplier if the recipient of the supply is acquiring the land for purposes of constructing a residential complex in the course of a commercial activity – in which case the recipient will be required to self-supply the property under section 191. The subsection also does not apply to the supplier if the recipient will, in turn, supply the land under a lease that is exempt pursuant to paragraph 6.1(a) of Part I of Schedule V – in which case it is the recipient who may be required to self-supply under subsection 190(3).

This amendment is pursuant to the press release of March 27, 1991 and applies to leases of land under which possession of the land is transferred to the lessee after March 27, 1991. It does not apply to supplies made pursuant to leases in writing entered into before March 28, 1991.

New subsection 190(4) ensures that land in a residential trailer park, which is supplied by way of exempt lease under paragraph 7(b) of Part I of Schedule V, is treated in the same manner as other residential real property that is leased.

Subsection 190(4) deems a person who leases a site in a residential trailer park on an exempt basis under paragraph 7(b) of Part I of Schedule V to have made and received a supply of the park and to have collected and paid tax calculated on the fair market value of the park at the time a site in the park is first occupied by the recipient of an exempt supply. As a result, the supplier is required to account for the tax deemed to have been collected in the supplier's net tax remittance.

Subsection 190(4) applies only when a site in a trailer park is first rented under exempt conditions. Operators of existing trailer parks leasing sites on an exempt basis are therefore unaffected by this provision. It also does not apply if the park was acquired by the operator as an exempt, used residential trailer park under section 5.3 of Part I of Schedule V or if, as a result of making exempt supplies of sites in the trailer park, the supplier was previously required to account for tax on the park under the change-in-use rules or under this subsection, provided the supplier had not claimed any input tax credits in respect of the park or improvements to the park since that change in use or last application of this subsection.

This amendment is pursuant to the press release of November 5, 1991 and applies to the lease of a site in a trailer park where possession or occupancy is given after November 5, 1991. It does not apply to any supply of a site where the lease was entered into in writing prior to November 6, 1991.

New subsection 190(5) deals with the situation where an existing residential trailer park is increased in size. In this case, tax equal to 7% of the fair market value of the additional land used in the residential trailer park is to be accounted for by the trailer park operator at the time any site in the additional area is first occupied under an exempt lease. As with subsection (4), subsection (5) does not apply where the last acquisition of the land was an exempt supply under section 5.3 of Part I of Schedule V or where tax has already been accounted for under this provision or pursuant to a change-in-use provision, provided the supplier had not claimed any input tax credits in respect of the additional area or improvements to the area since the change in use or the last application of this subsection.

This amendment is pursuant to the press release of November 5, 1991 and applies to the supply of a site in an area added to a residential trailer park where possession or occupancy is given after November 5, 1991. It does not apply to any supply of a site where the lease was entered into in writing prior to November 6, 1991.

Clause 51

Construction or Renovation of Mobile or Floating Homes

ETA
190.1

New subsection 190.1(1) is consequential to changes to paragraph (c) of the definition "builder" in subsection 123(1), which treats as a builder a person, such as a dealer, who supplies mobile or floating homes before they have been occupied as a place of residence. Section 190.1 deems these persons to have constructed the homes and to have completed the construction at the time ownership or possession of the home is transferred to the purchaser. Essentially, this provision is a timing rule; it establishes when the construction or substantial renovation of the home is considered to have been completed. The time of completion is relevant for the purposes of the GST New Housing Rebate under section 254 and the self-supply rules under section 191.

This amendment is effective January 1, 1991.

New subsection 190.1(2) deems a mobile or floating home that has been substantially renovated not to have been occupied as a place of residence before the substantial renovation. As a result, any person supplying the home after the substantial renovation is completed and before it is actually occupied as a place of residence is treated as a builder of the home, thus ensuring that the supply is taxable and that the renovated home qualifies for the GST New Housing Rebate.

This amendment is effective January 1, 1991 but does not apply to the substantial renovation of a mobile home or floating home where

- the substantial renovation is substantially completed on or before ANNOUNCEMENT DATE; or
- the substantial renovation is carried out for the purpose of making a supply of the home under an agreement in writing entered into on before ANNOUNCEMENT DATE.

Clause 52

Self-supply of Real Property

ETA
191

The purpose of section 191 is to ensure that GST applies to newly constructed or substantially renovated premises once they are rented or otherwise occupied as places of residences before being sold since the subsequent sales of those residences will generally be exempt as used housing. Section 191 provides that, in these circumstances, the builder of a residential complex is treated as having sold and repurchased the complex. As a result, the builder is required to account for GST on the fair market value of the complex.

The amendments to section 191 are largely technical in nature and clarify the application of the section. The substantive changes are the extension of the self-supply rules to builders who sell a house and lease the related land, and a clarification that pre-closing occupancy arrangements (e.g., where occupancy is provided to the purchaser prior to closing as part of the purchase and sale agreement) do not trigger the self-supply rules. The election under subsection 191(7) for remote work sites is also streamlined.

Subclause 52(1)

ETA
191(1)(d) and (e)

The amendment to paragraphs 191(1)(d) and (e) clarifies the time at which the builder is deemed to have made and received a supply as well as the time at which tax is deemed to have been paid and collected.

This amendment is effective January 1, 1991.

Subclause 52(2)

ETA
191(1)(b)

The amendment to paragraph 191(1)(b) clarifies that occupancy of a complex or unit by an individual under a pre-closing occupancy arrangement does not trigger the application of subsection 191(1) – e.g., where the purchaser of a condominium unit takes possession of the unit before the condominium is registered.

New subparagraph 191(1)(b)(ii) applies the self-supply rules in section 191 to builders who give possession of a residential complex under an arrangement whereby the residential unit is sold, but the related land is leased. Builders in these circumstances are required to account for tax on the fair market value of the land and building.

This amendment is pursuant to the press release of March 27, 1991 and applies to every supply of a residential complex where possession is transferred to the recipient of the supply after March 27, 1991, other than a supply under an agreement in writing entered into before March 28, 1991.

Subclauses 52(3), (4) and (5)

ETA
191(2), (3) and (4)

The amendments to subsections 191(2), (3) and (4) clarify the time at which the deemed supply by the builder under this section is considered to have been made and received as well as the time at which tax is considered to have been paid and collected.

These amendments are effective January 1, 1991.

Subclause 52(6)

ETA
191(7)

Subsection 191(7) is amended to remove the references therein to "officer", consequential to the addition of the definition "employee" in subsection 123(1), which includes an officer.

This amendment is effective January 1, 1991.

Subclause 52(7)

ETA
191(7)(c)

The amendment to paragraph 191(7)(c) is consequential to the repeal of subsection 191(8). As announced by the Minister of National Revenue on April 27, 1992, the election under subsection 191(7) will not be required to be filed with the Minister for complexes substantially completed on or after that date. However, the amendment to paragraph 191(7)(c) ensures that the election will still be required to be made in prescribed form containing the prescribed information.

Subclause 52(8)

ETA
191(8)

Subsection 191(8) is repealed, thereby removing the requirement to file the election under subsection 191(7) with the Minister of National Revenue.

This amendment is pursuant to the announcement made by the Minister of National Revenue on April 27, 1992. It applies to residential complexes in remote work sites where the construction or substantial renovation of the complex is substantially completed after April 26, 1992.

Clause 53

Sale of Real Property

ETA
193

Section 193 provides that where a registrant makes a taxable sale of real property, the registrant may claim, at the time of sale, an input tax credit for previously non-creditable or non-rebatable tax paid by the registrant in respect of the property. This prevents the application of tax to a price that already includes a hidden element of tax.

Subclause 53(1)

ETA
193(1)

The amendment to paragraph (b) of element "A" of the formula in subsection 193(1) replaces the existing reference to "tax collectible" with a reference to "tax payable or deemed to have been collected" to ensure that tax that is payable on a supply, but not collectible by the supplier because of subsection 221(2), and tax that a registrant is deemed to have collected (such as on a change in use of property) is included in determining the credit under subsection 193(1).

This amendment is effective January 1, 1991.

Subclause 53(2)

ETA
193(1) and (2)

Subsection 193(1) is amended to clarify that restrictions, under section 170 and Subdivision d of Division II of Part IX, with respect to the claiming of input tax credits do not apply to an input tax credit determined under subsection 193(1).

Further, the formula set out in subsection 193(1) is amended in three respects. First, paragraph (a) of element "A" is amended to clarify that the referenced acquisition is the last acquisition of the property by the registrant. The reference to the last acquisition also eliminates the need to specifically refer to other provisions under which the registrant was deemed to have acquired the property.

The second change to the formula is in the manner in which rebates are taken into account. Generally, the input tax credit to which a registrant is entitled on the taxable sale of real property is equal to the percentage use of the property in non-commercial activities immediately prior to the sale times the lesser of the tax payable on that sale and the tax that was payable by the registrant in respect of the last acquisition of the property (and any improvements thereto) by the registrant. However, if the registrant has already recovered part of that tax previously paid through a partial rebate under section 259, the credit under subsection 193(1) is reduced accordingly. Under the existing formula in subsection 193(1), the rebate is taken into account by subtracting it from the tax payable on the last acquisition of the property (and improvements thereto). The formula under the amended subsection, in effect, subtracts an amount equal to the applicable rebate rate times the input tax credit that would be determined if rebates were not taken into account.

Finally, element "A" of the formula is amended by adding a reference to the tax that would be payable on the sale of the property but for section 167, which allows for a tax-free roll-over of property on the sale of a business. This amendment ensures that a registrant will be able to recover any previously non-recoverable tax on real property that is sold as part of a sale of a business.

Subsection 193(2) provides an input tax credit to a public sector body that is not a financial institution on the taxable sale of real property by the body. The changes to this subsection parallel those described in subsection 193(1) described above.

These amendments to subsections 193(1) and (2) are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 54

Incorrect Statement as to Use of Real Property

ETA
194

Section 194 imposes a liability for tax on a supplier who makes a taxable supply of real property and incorrectly states to the recipient that the supply is exempt.

Section 194 is amended to add a reference to new sections 5.1, 5.2 and 5.3 of Part I of Schedule V to ensure that the liability imposed by section 194 applies where a person makes a taxable supply of land, a building or a residential trailer park and incorrectly states to the recipient that the supply is exempt under any of those added sections.

This amendment is effective January 1, 1991.

Clause 55

Prescribed Capital Property and Residential Complexes

ETA
195 and 195.1

Section 195 Prescribed Property

Section 195 provides authority to prescribe by regulation certain property that is to be treated as personal property and not real property. This treatment is relevant for purposes of, for example, the change-in-use rules for capital property in Subdivision d of Division II of Part IX, which differ depending on whether the property is personal property or real property.

The amendment to section 195 clarifies that the section applies only to capital property and not other types of property. This amendment is effective January 1, 1991.

Section 195.1 Residential Complex Not Capital Property

The purpose of the deeming rules under new section 195.1 is to clarify that the change-in-use rules for capital property in section 206 do not apply at the same time as the self-supply rules for builders of a residential complex or an addition to a multiple unit residential complex in section 191. This is accomplished by deeming the residential complex, or the addition to the residential complex, not to be capital property until such time as section 191 applies or until the builder has received an exempt supply by way of sale of the property. In essence, the property is treated as inventory for use in a commercial activity until it is deemed to be sold under section 191. The effect of this is to remove any possibility of tax applying twice on the same supply under these provisions.

Subsection 195.1(1) deems a residential complex not to be capital property of the builder of the complex unless the builder was deemed to have received a taxable supply of the complex under section 191. Because the complex is deemed not to be capital property prior to the application of section 191, there is no question of section 206 applying at the same time as section 191. However, the deeming provision under subsection 195.1(1) does not apply if the builder received an exempt supply of the complex – e.g., if the builder had previously sold the complex and then purchased it after it had been occupied as a place of residence by individuals.

Subsection 195.1(2) similarly deems an addition to a residential complex not to be capital property of the builder of the addition unless the builder self-supplied the addition under subsection 191(4) or the builder received an exempt supply of the addition.

New section 195.1 is effective January 1, 1991.

Clause 56

Last Acquisition or Importation

ETA
195.2

New section 195.2 clarifies that, in determining the last importation or acquisition of property – e.g., for purposes of the formulae in the change-in-use rules under Subdivision d of Division II of Part IX, which refer to the tax payable on the last acquisition or importation – an importation of the property shall not be taken into consideration unless tax was actually payable on the full value of the property.

Where a person imports capital property of the person that was improved outside of Canada and tax on the importation was payable on a value not exceeding the value of the improvement, section 195.2 deems the importation to be an importation of the improvement and not of the property. As a result, any reference in Part IX of the Act to tax paid or payable on improvements to capital property – e.g., the change-in-use formulae – would include a reference to a deemed importation of an improvement under section 195.2.

However, section 195.2 does not apply for purposes of Division III, thereby ensuring that tax under Division III continues to apply in the normal manner.

Section 195.2 is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 57

Intended Use, Appropriations and Insignificant Changes in Use

ETA
196, 196.1 and 197

Section 196 Intended and Actual Use

The input tax credit that a person is entitled to claim at the time property is acquired or imported is determined on the basis of the person's intended use of the property at that time. Section 196 provides that property is treated as having been used for the intended purpose immediately after its acquisition. Consequently, to the extent that the property is capital property and is actually used for some other purpose, the change-in-use rules in Subdivision d of Division II of Part IX would apply.

The amendment to section 196 applies the rules of that section to all persons, rather than only to registrants, and for purposes of all of Part IX rather than only Subdivision d of Division II thereof. The section is also amended to apply to imported property and to clarify the application of these rules to property that is intended to have more than one use. These amendments are effective January 1, 1991.

Section 196 is further amended to apply not only to acquisitions and importations of capital property, but also to appropriations of property that was not capital property of a person at the time of its acquisition or importation and that the person later begins to use as capital property. This amendment is consequential to the introduction of new rules in section 196.1 for appropriations of property for use as capital property.

This amendment is effective April 1, 1991.

Section 196.1 Appropriation for Use as Capital Property

New section 196.1 introduces rules for registrants who commence to use non-capital property as capital property or as an improvement to capital property. In these circumstances, the new rules require a registrant to account for tax on the property to the extent that the property was used in commercial activities and, after it is appropriated for use as capital property or as an improvement to capital property, is no longer for use in commercial activities of the registrant. Conversely, a credit is provided to registrants who appropriate non-capital property that was not used in commercial activities for use as capital property or an improvement to capital property in commercial activities.

Paragraph 196.1(a) deems the registrant to have made a supply of non-capital property when it is appropriated for use as capital property and to have collected tax calculated on the fair market value of the property, but only if the property was last acquired or imported for consumption, use or supply in the course of commercial activities of the registrant or was consumed or used in commercial activities.

Paragraph 196.1(b) deems the registrant to have received a supply of the property and to have paid tax calculated on its fair market value where the property, prior to it being appropriated for use as capital property, was last acquired for consumption, use or supply, or was consumed or used, in the course of commercial activities. As a result, the registrant is entitled to claim an input tax credit to the extent that the capital property or the improvement is for use in a commercial activity. This credit will offset the tax the registrant is deemed to have collected under paragraph 196.1(a) to the extent that the capital property or improvement is for use in commercial activities.

Where the property, prior to it being appropriated for use as capital property, was not last acquired for consumption, use or supply, and was not consumed or used in the course of commercial activities, the registrant is deemed to have paid tax at the time it is appropriated for use as capital property or an improvement to capital property. The tax deemed to have been paid is generally equal to the lesser of 7% of the fair market value of the property and the tax payable on the last acquisition or importation. However, the amount deemed to have been paid is adjusted for any rebate under section 259 the registrant was entitled to claim in respect of the property. As a consequence of having been deemed to have paid tax, the registrant is entitled to claim an input tax credit to the extent that the capital property or the improvement is for use in a commercial activity.

New section 196.1 is added pursuant to the press release of March 27, 1991 and is effective April 1, 1991.

Section 197 Insignificant Changes in Use

Section 197 provides that insignificant changes in use of capital property –i.e., a change that is less than 10% of the total use – will not be treated as a change in use.

Existing section 197 applies for purposes of Subdivision d of Division II of Part IX. The press release of March 27, 1991 proposed to amend the application of section 197 to, among other things, clarify that the exclusion for changes in the primary use of property is limited to capital personal property. This is achieved in the amended section 197 by specifically listing the change-in-use provisions to which section 197 is to apply. As a result, the amended section does not apply where there is a cessation of use of capital property in commercial activities or where a registrant who is an individual begins to use capital property for personal use or enjoyment. Finally, the amendment clarifies that the section applies to imported property as well as property acquired domestically.

These amendments to section 197 are pursuant to the press release of March 27, 1991 and are effective April 1, 1991.

Clause 58

Use in Supply of Financial Services

ETA
198

Section 198 provides that, to the extent that a registrant who is not a financial institution uses capital property in providing financial services that relate to commercial activities of the registrant, the capital property will be considered to be used in those commercial activities. Therefore, there is no requirement for a non-financial institution to apportion input tax credits for capital properties that are used in commercial activities and in providing financial services that relate to those commercial activities. The only substantive change to this provision is that it will apply for purposes of all of Part IX, rather than only Subdivision d of Division II of that Part.

This amendment is effective January 1, 1991.

Clause 59

Change in Use Caused by Operation of Part

ETA
198.1

New section 198.1 limits the tax liability imposed on registrants under the change-in-use rules in specified circumstances.

Paragraph 198.1(a) applies to capital property acquired either before or after January 1, 1991. It provides that where a change-in-use occurs as a result of a legislative change – e.g., an amendment changing the tax status of a supply from taxable to exempt – the amount of tax deemed to be collected by the registrant under the change-in-use rules is no greater than the amount of tax paid on the property and any improvements to the property in respect of the last acquisition or importation of the property and improvements. In other words, if no tax had been paid on the property (and hence, no input tax credits claimed) the change in use would not give rise to a tax liability.

Paragraph 198.1(b) limits the tax liability under the change-in-use rules with respect to property acquired or imported prior to 1991 and with respect to used goods acquired prior to 1994 in circumstances in which no tax was payable. For this type of property, the change-in-use provisions will result only in a recapture of input tax credits previously claimed on the property and improvements thereto, where the change in use occurs in any of the following circumstances:

- a person ceases to be a registrant,
- a member of a closely related group, before April 1991, elects under subsection 150(1) to have inter-company supplies treated as exempt supplies,
- the registration of a small supplier taxi operator ceases to apply to the non-taxi commercial activities of the operator, or
- a branch or division of a public service body becomes a small supplier division within the meaning of amended subsection 129(1).

New section 198.1 is effective January 1, 1991 and implements the measures announced in the press releases of March 27, 1991, November 5, 1991, and June 10, 1992.

Clause 60

Capital Personal Property

ETA
199

Section 199 sets out rules governing the determination of input tax credits for tax paid or payable on capital personal property. The amendments to section 199 are largely technical in nature. There is a substantive change to subsection 199(4) that provides that an input tax credit in respect of tax on an improvement to capital personal property can be claimed only if the capital property is for use primarily in a commercial activity immediately before it is improved.

Subclause 60(1)

Beginning Use of Capital Personal Property

ETA
199(3)

Existing subsection 199(3) deems a registrant who commences to use capital personal property primarily in a commercial activity to have paid tax on the property equal to the lesser of 7% of the fair market value of the property and the tax previously paid or deemed to have been paid on the property, less any rebates of that tax. As a result, the registrant may claim an input tax credit for tax that was previously non-recoverable.

The amendments to subsection 199(3) are technical in nature and clarify the meaning of the subsection.

The preamble to subsection 199(3) is amended to refer to the last acquisition or importation of the property. This amendment clarifies that, where a registrant has imported or acquired the property more than once (e.g., where a registrant is deemed to have acquired property on a change in its use), it is only the last acquisition or importation that is to be taken into consideration in subsection 199(3). The preamble to subsection 199(3) is also amended to exclude from the operation of that subsection, a person who commences to use capital personal property in a commercial activity as a result of becoming a registrant since, in that circumstance, the person will be entitled to an input tax credit on the capital property because of subsection 171(1).

The formula set out in paragraph 199(3)(b) is amended to ensure that an input tax credit is available where property on which tax was previously paid is acquired through the purchase of a business in circumstances in which section 167 applies. The formula also ensures that, where property has been acquired or imported by the registrant more than once, it is the tax payable on the last acquisition or importation of the property that is to be taken into account. The reference to the last acquisition also eliminates the need to refer specifically to subsection 200(2) since that subsection is amended, also as of ANNOUNCEMENT DATE, to deem a supply of property to have been received.

The formula in paragraph 199(3)(b) is also amended with respect to the manner in which rebates are taken into account. Generally, the amount of tax a registrant is deemed to have paid on property under subsection 199(3) (and thus entitled to claim as an input tax credit) is equal to the lesser of 7% of the fair market value of the property and the tax that was payable in respect of the last acquisition or importation of the property (and any improvements thereto). However, if the registrant has already recovered part of that tax through a partial rebate under section 259, the amount deemed to have been paid under subsection 199(3) is reduced accordingly. Under the existing subsection, the absolute amount of the rebate is subtracted from the amount that would otherwise be deemed to have been paid. The formula under the amended subsection, in effect, subtracts an amount equal to the applicable rebate rate times the amount otherwise deemed to have been paid.

The amendment to subsection 199(3) is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Subclause 60(2)

Improvement to Capital Personal Property

ETA
199(4)

Existing subsection 199(4), in effect, allows an input tax credit to be claimed by a registrant in respect of the tax on an improvement to capital personal property only if the property is used primarily in a commercial activity immediately after it is improved.

Amended subsection 199(4) provides that an input tax credit may not be claimed in respect of an improvement to capital personal property unless, at the time tax is paid or becomes payable on the improvement, the capital property is used primarily in commercial activities of the registrant.

This amendment to subsection 199(4) is pursuant to the press release of March 27, 1991 and is applicable to improvements acquired or imported after March, 1991.

Clause 61

Sale or Cessation of Use of Personal Property

ETA
200

Section 200 sets out the rules applicable to the sale of capital personal property that was not used primarily in commercial activities and to the cessation of such use of property.

Subclause 61(1)

ETA
200(2) and (3)

Subsection 200(2) requires a registrant who ceases using capital personal property primarily in commercial activities to account for tax on the property's fair market value at the time of the change in use.

The amendment to subsection 200(2) clarifies that, where a registrant has imported or acquired the property more than once, it is the last acquisition or importation that is considered for purposes of subsection 200(2).

The subsection is also amended to deem the registrant to have acquired the property and to have paid tax on the fair market value of the property. As a result, any reference in other sections of Part IX of the Act (such as in amended subsection 199(3)) to tax paid or payable on the last acquisition of the property would take into account the acquisition and the tax deemed to have been paid under subsection 200(2) without specifically referencing that subsection.

Subsection 200(3) ensures that tax does not apply to a sale of capital personal property that was not used primarily in a commercial activity by deeming the resale not to be a taxable supply.

The amended subsection achieves the same result by deeming the resale to be made otherwise than in the course of a commercial activity. The amended wording clarifies that there is still considered to be a supply for purposes of Part IX, however, given that the supply is deemed not to be made in the course of a commercial activity, no tax applies to the supply. Amended subsection 200(3) also clarifies that this rule applies notwithstanding the rules in new section 141.1, which deal with the disposition of personal property. Even though property that was used, or was last acquired for use, in a commercial activity is generally taxable on resale pursuant to section 141.1, the resale will not be taxable if the property is capital personal property to which subsection 200(3) applies – i.e., property in respect of which the supplier would not have been entitled to an input tax credit.

The only substantive change in subsection 200(3) is with respect to the time at which the test of primary use is to be applied. Under the existing wording, the sale of property is deemed not to be a taxable supply if, immediately before ownership of the property is transferred, the property was not being used primarily in commercial activities. The amended subsection refers to the last use of the property before the earlier of the time ownership is transferred and the time possession is transferred under the agreement for the supply. This amendment applies to all supplies of property other than supplies where ownership or possession of the property is transferred to the recipient of the supply on or before ANNOUNCEMENT DATE.

Subclause 61(2)

ETA
200(4)

As described above, the purpose of subsection 200(3) is to ensure that, where tax was paid on the acquisition or importation of capital personal property not used primarily in commercial activities (and therefore not eligible for input tax credits), the resale of that property is not subject to tax a second time. New subsection 200(4) provides that subsection 200(3) does not apply in the case of sales of capital personal property by the federal government – other than a specified Crown agent – or by provincial governments, since provincial governments do not pay GST on their purchases, and federal government departments are internally reimbursed for the GST they pay.

This amendment, announced in the November 5, 1991 press release, applies to sales of property where ownership or possession of the property is transferred after November 5, 1991.

Clause 62

Value of Passenger Vehicle

ETA
201

Section 201, in effect, precludes a registrant from claiming an input tax credit in respect of the GST payable on that portion of the cost of a passenger vehicle that exceeds the maximum capital cost of the vehicle for income tax purposes. (As of September 1, 1992, the maximum capital cost of a passenger vehicle for income tax purposes was $24,000, exclusive of GST and provincial sales taxes.)

Section 201 is amended such that the input tax credit that may be claimed by a registrant in respect of a change in use of a passenger vehicle, under subsection 199(3), or 206(2) or (3), is adjusted to account for any rebates in respect of the vehicle to which the registrant was entitled under section 259.

This amendment is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 63

Input Tax Credit for Passenger Vehicle or Aircraft

ETA
202

Section 202 sets out rules governing input tax credits in respect of passenger vehicles and aircraft.

Subclause 63(1)

ETA
202(2)

Subsection 202(2) provides that a registrant that is an individual or partnership may not claim an input tax credit in respect of a passenger vehicle or aircraft acquired or imported for use as capital property in commercial activities unless the vehicle or aircraft is acquired for use exclusively in commercial activities of the registrant.

The amendment removes a redundant reference to commercial activities in relation to the use for which the vehicle or aircraft was originally acquired or imported. The amendment is effective after ANNOUNCEMENT DATE.

Subclause 63(2)

ETA
202(3)

Under existing subsection 202(3), a registrant who is an individual or partnership may claim an input tax credit in respect of an improvement to a passenger vehicle or aircraft that is capital property of the registrant only if the vehicle or aircraft is used, both before and after the improvement is made, exclusively in commercial activities of the registrant. Under amended subsection 202(3), it is only the use of the vehicle or aircraft before the improvement is made that is relevant for determining whether the registrant is entitled to an input tax credit in respect of the improvement.

If a registrant who is an individual or partnership uses a passenger vehicle or aircraft that is capital property exclusively in commercial activities and, after improving the vehicle or aircraft, the registrant begins to use it otherwise than exclusively in commercial activities, the registrant would be required to self-assess tax, pursuant to subsection 203(2), on the fair market value of the vehicle or aircraft (which would include the value of the improvement). To the extent that tax applies to the value of the improvement at that time, this amendment prevents double taxation of improvements in these circumstances.

This amendment was announced in the press release of March 27, 1991 and applies to improvements acquired or imported after March, 1991.

Subclause 63(3)

ETA
202(3)

Under existing subsection 202(3), a registrant who is an individual or partnership is not entitled to an input tax credit in respect of an improvement to a passenger vehicle or aircraft that is capital property unless the vehicle or aircraft was used exclusively in commercial activities of the registrant at all times after the vehicle or aircraft was acquired by the registrant, including the time before and after the individual or partnership became a registrant.

Under amended subsection 202(3), it is only the use of the vehicle or aircraft after the individual or partnership became a registrant that is relevant for determining whether the registrant is entitled to an input tax credit in respect of an improvement in these circumstances.

As a result of an amendment to subsection 203(3), the sale of a passenger vehicle or aircraft that is capital property of a registrant who is an individual or partnership is subject to tax if the vehicle or aircraft was used exclusively in commercial activities of the registrant at all times after the individual or partnership became a registrant. Hence, the amendment to subsection 202(3) is consistent with the change in subsection 203(3) and prevents double taxation of improvements – i.e., it ensures that registrants are entitled to input tax credits in respect of improvements to passenger vehicles or aircraft where the subsequent sale of the vehicle or aircraft is taxable.

This change applies to improvements acquired or imported after ANNOUNCEMENT DATE.

Subclause 63(4)

ETA
202(4)

Existing subsection 202(4) provides that a registrant who is an individual or partnership may, at the end of a taxation year of the registrant, claim an input tax credit in respect of a passenger vehicle or aircraft that is capital property used otherwise than exclusively in commercial activities of the registrant. The credit is equal to the tax fraction of the capital cost of the vehicle or aircraft deducted for income tax purposes.

As a result of the amendment to the formula set out in subsection 202(4), a registrant may not claim an input tax credit under this subsection in respect of a passenger vehicle or aircraft where the vehicle or aircraft is made available to an individual, giving rise to a taxable benefit for the individual under paragraph 6(1)(e) or subsection 15(1) of the *Income Tax Act*. The input tax credit is denied in this circumstance because, under section 173, GST does not apply to a taxable benefit related to a passenger vehicle or aircraft used otherwise than exclusively in commercial activities of a registrant who is an individual or partnership.

The amendments to subsection 202(4) were announced in the press release of March 27, 1991 and apply to taxation years of registrants ending after March, 1991.

Subsection 202(4) is also amended by deleting the condition that the passenger vehicle or aircraft must have been originally acquired or imported for use, to some extent, in commercial activities. As a result, if a registrant originally acquired a vehicle exclusively for personal use and subsequently commenced to use it in commercial activities, the registrant would be entitled to claim input tax credits under subsection 202(4) from the time the registrant began to use the vehicle in commercial activities. This measure is effective January 1, 1991.

Clause 64

Sale of Passenger Vehicle or Aircraft

ETA
203

Section 203 provides that a registrant may claim an input tax credit in respect of a taxable sale of a passenger vehicle that is capital property, where the cost of the vehicle exceeded its capital cost for income tax purposes and hence, pursuant to section 201, a portion of the tax originally paid (i.e., the portion calculated on the excess) remains unrecovered. It also sets out the change-in-use rules for passenger vehicles or aircraft that are capital property of registrants who are individuals or partnerships, as well as the circumstances in which sales of such vehicles or aircraft are not subject to tax.

Subclause 64(1)

ETA
203(1)

Subsection 203(1) provides that, where a registrant makes a taxable sale of a passenger vehicle that was last used as capital property in commercial activities of the registrant, the registrant may claim an input tax credit in respect of the vehicle equal to the amount of tax that was payable on the acquisition or importation of the vehicle and that, because of section 201, was not previously recovered as an input tax credit. A full input tax credit in respect of a passenger vehicle that is capital property would typically not be available, by virtue of section 201, where the cost of the vehicle exceeds its capital cost for income tax purposes.

Subsection 203(1) is amended, with respect to sales that occur after March, 1991 and on or before ANNOUNCEMENT DATE, to clarify the application of this rule during that period. Specifically, the amendment provides that the input tax credit to which a registrant is entitled under this subsection is to be calculated with reference to the original acquisition or importation of the passenger vehicle and without reference to any tax deemed to be payable by the registrant in respect of a change in use of the vehicle.

This amendment was announced in the press release of March 27, 1991 and applies to sales of passenger vehicles where ownership and possession of the vehicle is transferred to the recipient after March, 1991.

Subclause 64(2)

ETA
203(1)

With respect to sales of passenger vehicles after ANNOUNCEMENT DATE, subsection 203(1) is further amended so that the input tax credit under that subsection is determined with reference to the last acquisition or importation of the vehicle, rather than the original acquisition or importation, and is also reduced by the amount of any rebates under section 259 to which the registrant was entitled in respect of the vehicle. These measures ensure that double taxation does not occur when passenger vehicles that are capital property are sold by registrants and that an input tax credit under this subsection is not overstated where a registrant is entitled to a rebate in respect of a passenger vehicle. A reference to section 167 is also added to ensure that a registrant is entitled to a credit in respect of a vehicle where the vehicle was originally acquired under an agreement of purchase and sale of a business.

This amendment applies to sales of passenger vehicles where ownership and possession of the vehicle is transferred to the recipient after ANNOUNCEMENT DATE.

Subclause 64(3)

ETA
203(2)(b)

Subsection 203(2) provides that, where a registrant who is an individual or partnership begins to use a passenger vehicle or aircraft that is capital property of the registrant otherwise than exclusively in commercial activities, the registrant is required to self-assess tax on the fair market value of the vehicle or aircraft at that time.

The amendment to paragraph 203(2)(b) ensures that the wording of this paragraph is consistent with the amended wording of subsection 200(3), which sets out the general changes-in-use rules for capital personal property. This amendment is effective January 1, 1991.

Subclause 64(4)

ETA
203(3)

Subsection 203(3) provides that, in certain circumstances, the sale, by a registrant who is an individual or partnership of a passenger vehicle or aircraft that is capital property of the registrant is not subject to tax. Specifically, under the existing provision, such a sale is subject to tax only if the vehicle or aircraft is used exclusively in commercial activities of the registrant at all times after the registrant acquired the vehicle or aircraft, including the time before and after the individual or partnership became a registrant.

The amendment to subsection 203(3) provides that it is only the use of the vehicle or aircraft after the individual or partnership became a registrant that is relevant for purposes of determining whether the sale of the vehicle or aircraft is taxable. To the extent that an individual or partnership is entitled, upon becoming a registrant, to claim an input tax credit under subsection 171(1) in respect of a passenger vehicle or aircraft that is capital property used exclusively in commercial activities, it is appropriate that the subsequent resale of the vehicle or aircraft be subject to tax where the vehicle or aircraft is used exclusively in commercial activities at all times after the individual or partnership becomes a registrant. This measure also ensures that the rules for passenger vehicles and aircraft acquired for use as capital property by a registrant who is an individual or partnership are consistent with the rules for other capital property.

The amendment is effective ANNOUNCEMENT DATE.

Clause 65

Capital Personal Property of Financial Institutions

ETA
204 and 205

Subclause 65(1)

Existing section 204 and subsections 205(1) and (2) provide that personal property of a registrant that is a financial institution (within the meaning of section 149) having a cost of more than $50,000 to the institution is treated as real property for purposes of the GST change-in-use rules in subsections 206(2) to (5) and the real property credit in subsection 193(1).

Existing section 204 and subsections 205(1) and (2) have been restructured and simplified in new section 204 to make the personal property rules for financial institutions clearer and more concise.

Existing subsections 205(3) and (4) provide that, where a registrant reduces the extent to which personal property of the registrant is used in commercial activities as a result of having made an election under subsection 150(1), the change-in-use rules in subsections 206(4) and (5) and the real property credit in subsection 193(1) apply to all personal property of the registrant. New subsection 205(1) sets out these rules in existing subsections 205(3) and (4) as they apply to a registrant who is a financial institution at the time an election under subsection 150(1) by the registrant takes effect. New subsection 205(2) parallels the rules in existing subsections 205(3) and (4) as they apply to a registrant who is not a financial institution at the time.

These amendments are effective January 1, 1991.

Subclause 65(2)

ETA
205(2) to (7)

Section 205 is amended to add change-in-use rules applicable to capital personal property of persons who become or cease to be financial institutions by virtue of the "de minimus" test in paragraph 149(1)(b) or for other reasons. These new rules recognize that, once a person becomes a financial institution for purposes of Part IX of the Act, the treatment of the person's capital personal property is no longer based on its primary use as it is for non-financial institutions. The capital personal property of a non-financial institution is treated as if it were used exclusively in commercial activities as long as the actual extent of such use is at least 51 percent. Conversely, if it is used less than 50% in commercial activities, it is treated as if it were not used in commercial activities at all. This, of course, is the basis on which input tax credits are determined for such property of non-financial institutions, resulting in either a full input tax credit or none at all.

In contrast, input tax credits for the capital personal property of financial institutions are allowed to the actual extent of its commercial use. Therefore, when a person becomes a financial institution, the person is treated as having decreased the commercial use of any capital personal property of the person that immediately before that time was used primarily, but not exclusively, in commercial activities. The opposite is true with respect to any capital personal property that, immediately before that time, was used in commercial activities but not primarily for that purpose. Conversely, when a person ceases to be a financial institution (e.g., the person no longer satisfies the "de minimus" test), the person is treated as having increased the use in commercial activities of any capital personal property of the person that, immediately before that time, was used primarily, but not exclusively, in commercial activities and vice versa for capital personal property used in commercial activities but not primarily for that purpose.

Where the extent of use of capital personal property in commercial activities is thus considered to have increased due to a person becoming or ceasing to be a financial institution, the person will be able to claim input tax credits based on the extent of the change in use. Alternatively, where the extent of use of capital personal property in commercial activities decreases due to the person becoming or ceasing to be a financial institution, there will, in effect, be a recapture of input tax credits to the extent of the change in use.

Section 205 is also amended to provide capital personal property rules that will apply in circumstances where a financial institution acquires such property by acquiring all or part of a business of a registrant, amalgamating with one or more other corporations to form a financial institution, or winding-up a non-financial institution into the financial institution. If, as a result, the extent to which capital personal property is used in commercial activities increases, the institution can claim an input tax credit in respect of the property. Alternatively, if the extent to which capital personal property is used in commercial activities decreases, the institution will have to pay tax in respect of the property – i.e., there is, in effect, a recapture of input tax credits previously claimed in respect of the property.

The details of these amendments are described below.

Revised subsection 205(2) applies to persons who become financial institutions by virtue of having made an election under subsection 150(1) or for some other reason. Amended subsection 205(2) provides that, where a registrant increases the extent to which capital personal property is used in commercial activities as a result of becoming a financial institution, the change-in-use rule in subsection 206(2) applies to all capital personal property of the registrant. Amended subsection 205(2) also provides that, where a registrant reduces the extent to which capital personal property is used in commercial activities as a result of becoming a financial institution, the change-in-use rules in subsections 193(1) and 206(4) and (5) apply to all capital personal property of the registrant.

New subsection 205(3) applies to persons who cease to be financial institutions. This subsection provides that where a registrant increases the extent to which capital personal property is used in commercial activities as a result of ceasing to be a financial institution, the change-in-use rules in subsections 206(2) and (3) apply to all capital personal property of the registrant. This subsection also provides that where a registrant reduces the extent to which capital personal property is used in commercial activities as a result of ceasing to be a financial institution, the change-in-use rules in subsections 193(1) and 206(4) apply to all capital personal property of the registrant.

New subsection 205(4) also applies to financial institutions that acquire all or part of a business of a registrant. This subsection provides that the change-in-use rules in subsections 193(1) and 206(4) and (5) apply to all capital personal property acquired from the registrant.

New subsection 205(5) applies to financial institutions that acquire all or part of a business of a registrant. This subsection provides that the change-in-use rules in subsection 206(2) apply to all capital personal property acquired from the registrant and for which the registrant would not have claimed an input tax credit, but only if the property is acquired by the financial institution after 1993. This is consistent with the rules under section 176 with respect to the acquisition of used goods from a person who is not required to charge tax.

New subsection 205(6) applies to financial institutions that are formed by an amalgamation, referred to in section 271, of a non-financial institution with one or more other corporations. This subsection will provide that the capital property rules applicable to registrants that become financial institutions (i.e., subsection 205(2)) apply to the property of the non-financial institution as if it became a financial institution at the time of amalgamation.

New subsection 205(7) applies to a winding-up of a non-financial institution in circumstances described in section 272, where property of the non-financial institution becomes property of a financial institution that is a registrant who owned 90% of the capital stock of the non-financial institution. This subsection will provide that the capital property rules applicable to registrants that become financial institutions (i.e., subsection 205(2)) apply to the property of the non-financial institution as if it became a financial institution at the time of the winding-up.

These amendments are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 66

Capital Real Property

ETA
206(2) to (5)

Section 206 sets out the general rules for changes in the use of capital real property. These rules do not apply to an individual or to a public sector body that is not a financial institution.

Subsection 206(2) Beginning Use in Commercial Activity

Subsection 206(2) deems a registrant who commences to use capital real property in a commercial activity to have paid tax on the property. The amount of tax deemed to have been paid is generally equal to the lesser of 7% of the fair market value of the property and the tax previously paid on the property, less any rebates claimed in respect of the property. As a result, the registrant may claim an input tax credit for the tax that is deemed to have been paid to the extent that the property is for use in a commercial activity.

The preamble to subsection 206(2) is amended to refer to the last acquisition of the property by the registrant. This amendment clarifies that, where a registrant acquired the property more than once (e.g., under the original purchase and under a deemed acquisition as a result of a change in use of the property), it is only the last acquisition that is taken into consideration in subsection 206(2). The preamble is also amended to exclude from the operation of subsection 206(2), registrants who commence to use capital real property in a commercial activity as a result of becoming a registrant, as this commencement of use is dealt with by the rules for becoming a registrant in subsection 171(1).

Subsection 206(2) is amended to clarify that, where tax was payable by the registrant on more than one acquisition of the property, only the tax payable on the last acquisition is to be considered in determining the amount of tax deemed under that subsection to have been paid. Similarly, the amendment clarifies that it is only tax payable on improvements to the property acquired or imported since the last acquisition of the property that is to be considered.

The formula for determining the amount of tax deemed under this subsection to have been paid is also amended with respect to the manner in which rebates are taken into account. As noted above, that amount is generally equal to the lesser of 7% of the fair market value of the property and the tax previously payable on the property and improvements thereto. However, if the registrant already recovered part of that tax through a rebate under section 259, the amount of tax deemed to have been paid under this subsection is reduced accordingly. Under the existing wording, the absolute amount of the rebate is subtracted from the total tax previously paid. The amended formula, in effect, subtracts an amount equal to the applicable rebate rate times the amount otherwise deemed to have been paid.

Subsection 206(3) Increasing Use in Commercial Activity

Subsection 206(3) deems a registrant who increases the use of capital real property in commercial activities to have paid tax on the portion of the property that changes from non-commercial to commercial use. The amount of tax that is deemed to have been paid is equal to the lesser of the tax previously paid on the portion of the property that is being taken into commercial use (less any rebates claimed) and 7% of its fair market value. As a result, the registrant is entitled to claim an input tax credit for the tax deemed to have been paid.

The amendments to subsection 206(3) parallel the changes made to subsection 206(2). The amendment ensures that it is only the last acquisition of the property and improvements acquired or imported after that last acquisition that are taken into consideration. The amendment also parallels the change in subsection 206(2) with respect to the manner in which public service body rebates are accounted for. Finally, the amendment clarifies that the rules in the subsection apply for purposes of determining an input tax credit and not for purposes of Part IX in general. As a result, the deemed acquisition of the registrant under paragraph 206(3)(a) is not to be taken into consideration in other provisions of Part IX that refer to the last acquisition, unless an input tax credit is determined under those provisions.

Subsection 206(4) Ceasing Use in Commercial Activities

Subsection 206(4) deals with the situation where a registrant ceases to use capital real property in commercial activities. In this circumstance, the registrant is deemed to have made a supply and to have collected tax on that portion of the property that was, immediately prior to the cessation in use, used in commercial activities. As a result, the registrant is required to remit the tax deemed to have been collected.

The amendment to subsection 206(4) ensures that it is only the last acquisition of the property and improvements to the property acquired or imported since that last acquisition that are taken into account in determining the amount of tax that is to be remitted. The formula under subsection 206(4) is also adjusted to account for public service body rebates in a manner consistent with the formulae under amended subsections 206(2) and (3).

Subsection 206(5) Reducing Use in Commercial Activities

Subsection 206(5) applies to a registrant who reduces the extent to which capital real property is used in a commercial activity without ceasing to use it in a commercial activity. In this case, the registrant is deemed to have made a supply and to have collected tax on that portion of the property that is no longer used in a commercial activity. The tax deemed to have been collected is equal to the lesser of the tax previously paid on that portion of the property that is no longer being used in a commercial activity (less any rebates claimed) and 7% of its fair market value.

The amendment to subsection 206(5) clarifies that only the last acquisition of the property and improvements acquired or imported since that last acquisition are taken into account in determining the amount of tax that is deemed to have been collected. The amendment also ensures that any rebate under section 259 to which the registrant was entitled in respect of the property or improvements to the property is properly taken into account, in a manner consistent with the formulae under amended subsections 206(2) to (4).

These amendments to section 206 are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 67

Change in Use of Real Property of Individuals

ETA
207

Section 207 sets out rules for GST registered individuals who cease using capital real property in a commercial activity or reduce the extent to which the property is used in a commercial activity.

Subsection 207(1) Ceasing Use in Commercial Activities

Subsection 207(1) applies where a registrant who is an individual ceases to use capital real property in a commercial activity or begins to use the property primarily for the individual's (or a related individual's) personal use or enjoyment. The registrant in this case is required to account for tax to the extent that the property was previously used in a commercial activity.

The amendment to subsection 207(1) parallels the amendments to subsection 206(4) by ensuring that it is only the last acquisition of the property and improvements acquired or imported since that last acquisition that are taken into account in determining the amount of tax that is deemed to have been collected and therefore remittable by the registrant. The amendment also deems the registrant to have received a supply of the property and to have paid tax on that supply. As a result, any reference in Part IX of the Act to an acquisition of the property or to tax paid will include a reference to the supply deemed to have been received, and the tax deemed to have been paid, in respect of the property under subsection 207(1).

Subsection 207(2) Reducing Use in Commercial Activities

Subsection 207(2) applies where a registrant who is an individual reduces the extent to which capital real property is used in a commercial activity without ceasing to use it in a commercial activity and without commencing to use it primarily for the individual's personal use and enjoyment. The registrant in this case is required to account for tax on the property to the extent of the reduction of the use of the property in commercial activities.

The amendment to subsection 207(2) clarifies that the subsection applies only for purposes of determining the registrant's net tax and not for purposes of all of Part IX. As a result, the supply deemed to have been made under paragraph 207(2)(a) will not, for example, be taken into account in determining the last acquisition, and the related tax in respect thereof, of the property for purposes of subsection 207(1). Consistent with the other amendments to the change-in-use provisions, this amendment clarifies that it is only the last acquisition of the property and improvements acquired or imported since that last acquisition that are to be taken into consideration in determining the amount of tax that is deemed to have been collected.

These amendments to subsections 207(1) and (2) are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 68

Acquisition of Capital Real Property by Individual

ETA
208

Section 208 sets out the rules for GST-registered individuals who commence to use capital real property in a commercial activity or increase the extent to which the property is used in a commercial activity.

Subclause 68(1)

ETA
208(1) to (3)

Subsection 208(1) provides that a GST-registered individual cannot claim an input tax credit in respect of real property acquired primarily for the personal use and enjoyment of the individual or a related individual, even if the property is partly used as capital property in commercial activities.

Subsections 208(2) and (3) enable a GST-registered individual to claim an input tax credit when the individual commences to use real property in commercial activities or increases the extent to which the property is used in commercial activities, provided the property is not primarily for the personal use or enjoyment of the individual or a related individual.

The amendments to these subsections ensure that the wording therein is consistent with the other capital property provisions in

Part IX and that it is only the last acquisition of property and improvements made to the property since that last acquisition that are taken into consideration in determining the amount of tax that the individual is deemed to have paid under these subsections.

These amendments are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Subclause 68(2)

ETA
208(4)

Existing subsection 208(4) provides that a GST-registered individual may not claim an input tax credit in respect of any improvement to capital real property if the property is primarily for the personal use or enjoyment of the individual, or any related individual, immediately after it is improved.

The press release of March 27, 1991 announced that this rule would be amended so that the input tax credit entitlement for improvements to capital property would be based on the use of the property immediately before the improvement was made. The purpose of this amendment is to ensure that the tax on the improvement is not taken into account twice where there is a change in use of the property before or after the improvement is made. For example, if an improvement to real property is acquired by a registrant for the purpose of improving the property for use in a commercial activity and, accordingly, after the improvement is made, the property begins to be used in commercial activities, the registrant would, under the existing rules, obtain an input tax credit for the improvement at the time of the acquisition and would again be compensated for the tax on the improvement when its value was included in the change-in-use formula under subsection 206(2).

To avoid this double-counting, subsection 208(4) is amended so that the input tax credit for the acquisition of the improvement is determined on the basis of the use of the capital real property at the time that tax becomes payable or is paid without having become payable on the improvement. This achieves the desired objective because the change-in-use rules only take into account tax that became payable or was paid on improvements before the change in use. Thus, in the example cited above, if the tax on the acquisition of the improvement became payable before the change in use of the property (i.e., when the property was used only in non-commercial activities), the input tax credit for the improvement would be denied at the time of acquisition. However, that tax would be subsequently recovered pursuant to the rules under subsection 206(2). If, on the other hand, the tax on the acquisition of the improvement did not become payable until after the change in use of the property (i.e., when the property began to be used in commercial activities), that tax would be claimed as an input tax credit under section 169 in respect of the acquisition of the improvement and would not be included in the change-in-use formula.

This amendment is pursuant to the press release of March 27, 1991 and applies to improvements acquired or imported after March, 1991.

Clause 69

Real Property of Certain Public Sector Bodies

ETA
209 and 210

Sections 209 and 210 provide rules for the treatment of acquisitions, sales, and changes in use of real property of certain public sector bodies. Generally, these organizations treat their capital real property as if it were capital personal property. Accordingly, existing section 209 sets out rules that are identical to those under subsections 199(2) to (4) with respect to capital personal property. The amended section 209 achieves the same result by cross referencing those other subsections. In addition, it incorporates the rules in existing section 210.

Pursuant to the November 5, 1991 press release, new subsection 209(2) provides that subsection 200(3), under which sales of property not used primarily in a commercial activity are not taxable, does not apply to an otherwise taxable sale of real property made to an individual, nor to a taxable sale of new housing. However, this exclusion under subsection 209(2) will not apply to sales of real property where ownership or possession of the property is transferred either before November 6, 1991 or under an agreement in writing entered into before November 6, 1991.

Clause 70

Election for Real Property of a Public Service Body

ETA
211

Generally, the capital real property of a public service body (as defined in subsection 123(1)) is treated the same as capital personal property for GST purposes. This means that input tax credit entitlements for such property and the tax status of supplies of the property is dependent on its primary use. However, under section 211, a public service body can opt out of these "primary use" rules. This election also has the effect of taking the public service body out of the exemption under section 25 of Part VI of Schedule V for certain real property supplies.

As announced in the press release of November 5, 1991, subsection 211(1) is amended to allow a public service body to make the election under section 211 in respect of real property that is inventory for resupply, as well as real property acquired by the body by way of lease, licence or similar arrangement for the purpose of sub-leasing the property. Subsection 211(1) is also amended to delete the reference to section 210, which is being repealed and replaced with amended section 209.

The purpose of subsections 211(2) and (4) is to ensure that, where an election under section 211 by a public service body takes effect or ceases to have effect with respect to real property held by the body at that time, the body is put in the same position, for the purposes of claiming input tax credits for the property, as if the body had acquired the property at that time. Thus, upon an election becoming effective with respect to particular property, the body is treated as having re-acquired the property and as having paid tax so that any input tax credits previously denied under the "primary use" test when the property was originally purchased can be claimed to the extent that the property is for use in commercial activities. Conversely, when such an election ceases to have effect, the deemed sale and re-acquisition of the property by the body would have the effect of requiring the body to remit an amount equal to 7% of the fair market value of the property, unless it is for use primarily in a commercial activity at that time.

Since the election under section 211 is extended to non-capital property as of November 6, 1991 and the rules of subsections 211(2) and (4) are only pertinent to capital property, these subsections are amended to refer specifically to property described in paragraph 211(1)(a) or (b). A further amendment is made to these subsections to ensure that they do not apply at the same time as section 171 applies upon the body becoming or ceasing to be a registrant. As well, there is no need for subsection 211(2) to deem a re-acquisition of property if an election, under section 211, with respect to the property was in effect on the day the property was acquired. In this case, the property would not have been subject to the primary use rules and there would therefore be no need to provide or recapture input tax credits at the time the election takes effect.

Finally, subsections 211(2) and (4) are amended to ensure that they are consistent with other provisions of Part IX relating to capital property wherein reference is made to the "last acquisition" of property.

These amendments to subsections 211(1), (2) and (4) are effective November 6, 1991.

Clause 71

Imposition of Tax on Imported Goods

ETA
212

Section 212 imposes GST on goods imported into Canada. It provides that every person who is liable under the *Customs Act* to pay duty on such goods (or would be so liable if the goods were subject to duty) is liable to pay GST on the goods. The amendment to section 212 ensures that the terminology in this section is consistent with that of related provisions of the *Customs Act*.

The amendment is effective January 1, 1991.

Clause 72

Import Certificates

ETA
213.1 and 213.2

The press release of March 10, 1992 contained an announcement of a system of import certificates to relieve importers of having to pay tax on goods that are imported to be processed for a non-resident person and subsequently exported without being supplied or used in Canada. An amendment to the *Non-taxable Imported Goods (GST) Regulations*, made under section 8 of Schedule VII, is proposed that would add such goods to the list of goods that may be imported on a non-taxable basis. The circumstances described in the March 10, 1992 press release necessary for this treatment will be set out in those Regulations. One of the requirements is that the importer must have a valid import certificate issued by the Minister of National Revenue. Further, the Minister may require the importer to post security as a condition of obtaining the certificate. New sections 213.1 and 213.2 of the Act provide authority for the Minister to request security and to issue import certificates.

A request for an import certificate must be filed with the Minister in prescribed manner and contain prescribed information. An import certificate is generally valid for three years after which time the Minister may, upon receipt of an application by the person, issue the person another certificate or renew the certificate.

The Minister may, after giving reasonable written notice to a person possessing an import certificate, cancel the certificate if the person fails to comply with the conditions attached to the issuance of the certificate, if the Minister determines that the certificate is no longer required or if the Minister determines that the person will no longer be importing goods of a class in respect of which the certificate was issued in circumstances in which the goods would be included in Schedule VII. Where an import certificate is cancelled, the Minister is required to notify the person in writing of the effective date of the cancellation.

Where the Minister cancels a person's import certificate because of the person's failure to comply with the conditions attached to the issuance of the certificate, a new certificate may not be issued to the person before the day that is two years after the effective date of the cancellation.

New sections 213.1 and 213.2 provide the Minister the authority to request security and issue import certificates as of February 1, 1992. However, a person's certificate will only be valid in respect of goods imported after February 29, 1992, pursuant to the proposed amendment to the *Non-Taxable Imported Goods (GST) Regulations*.

Clause 73

Payment of Tax on Imported Goods

ETA
214

Section 214 provides that the GST imposed on imported goods is to be paid and collected under the *Customs Act*, and interest and penalties imposed, calculated, paid and collected under that Act, as if the tax were a customs duty levied under the *Customs Tariff*. The amendment modifies the wording of the section to conform to that of the *Customs Act*.

The amendment is effective January 1, 1991.

Clause 74

Value of Imported Goods

ETA
215

Section 215 provides that GST on imported goods is to be calculated on the excise and duty-paid value of the goods. The amendment to section 215 modifies the wording of the section to conform to that of the *Customs Act*.

Clause 75

Rebate for Returned or Defective Goods

ETA
215.1

This amendment adds new section 215.1, which provides a rebate of tax to importers of goods in certain situations. A rebate will not be paid under this section to the extent that the amount has been previously rebated, refunded or remitted to the person or if the person has claimed or is entitled to claim an input tax credit for the amount. A rebate of an amount will be paid under this section only where a person files an application for the rebate with the Minster of National Revenue within four years after the amount was paid.

Subsection 215.1(1) Rebate in respect of Goods Imported On Consignment or Approval

Subsection 215.1(1) provides for a rebate of tax paid on goods imported on consignment or approval where the goods are re-exported within sixty days for return to the supplier without having been used or consumed in Canada except on a trial basis.

Subsections 215.1(2) and (3) Rebate in respect of Imported Goods that are Defective or Damaged

Subsection 215.1(2) provides for a rebate of tax paid under Division III on goods imported for consumption, use or supply otherwise than exclusively in the course of a commercial activity or by an unregistered small supplier, where an abatement or refund of duty has been granted under section 73, 74 or 76 of the *Customs Act* because the goods were damaged, of inferior quality, defective, did not include the correct quantity or were not the goods ordered.

A rebate will not be paid to a person where the person is entitled to be compensated by receiving, under a warranty, a supply of replacement parts that are goods included in section 5 of Schedule VII.

The amount of the rebate will be determined by a formula that takes into consideration the abatement or refund of duties under the *Customs Act* as well as the implied reduction in value of the goods for GST purposes.

Subsection 215.1(3) provides for a rebate in the same circumstances, and subject to the same conditions, as set out in subsection 215.1(2) except that the goods in this case are not subject to duty. The rebate under this subsection will be administered by applying the rules under sections 73, 74 and 76 of the *Customs Act*, with the necessary modifications.

These changes were announced in the press release of March 27, 1991 and are effective January 1, 1991.

Clause 76

Application of Customs Act

ETA
216

Existing section 216 provides for procedures for appeals from valuations of goods for Division III purposes and from determinations as to whether goods are taxable under that Division. Specifically, sections 58 to 66 of the *Customs Act* apply for GST purposes as if a determination or appraisal (or a re-determination or re-appraisal) of the value of imported goods were a determination or appraisal made under that Act. Where a person disagrees with the appraised value for tax as determined by Canada Customs, that person may appeal to the Canadian International Trade Tribunal. Such appeals are restricted to issues of value. Where a person has paid an amount as tax under Division III of the *Excise Tax Act* and there is a disagreement over any matter other than a determination of value for purposes of Division III (e.g., a disagreement over whether the goods are included in Schedule VII) the person may apply for a rebate under section 261 of the *Excise Tax Act* (i.e., a rebate of an amount paid in error as tax). The appeal from a decision on an application for a rebate is to the Tax Court of Canada (sections 301 to 312).

New subsections 216(1) to (5) clarify that the "determination of the tax status" of goods (i.e., whether the importation of goods is non-taxable because they are included in Schedule VII) is to be made in accordance with the *Customs Act* as if it were a determination (or re-determination or further determination) of the tariff classification of the goods. An appeal from this determination will be to the Tax Court of Canada. Subsection 216(5) provides that an appeal to the Tax Court of Canada from a "determination of the tax status" proceeds in a manner consistent with the appeal of an assessment under Division VII of the *Excise Tax Act*.

Where a dispute arises as to the value of goods, the procedures set out in the *Customs Act* will continue to apply, including with respect to appeals to the Canadian International Trade Tribunal. In addition, provision is made, in subsection 216(6), for the rebate of amounts found to have been paid in excess following a re-appraisal or further appraisal (or re-determination or further determination).

Subsection 216(7) is added to provide that section 69 of the *Customs Act* applies where there is an appeal in respect of the determination of the tax status of goods or the value of goods for tax purposes. Under that section, a refund of the tax in issue paid by a person may be made where the person has filed an appeal under the *Customs Act* and has posted security.

The amendments to section 216 are applicable with respect to goods that are released (within the meaning assigned by subsection 2(1) of the *Customs Act*) after the day these amendments are enacted.

Clause 77

Imported Taxable Supplies

ETA
217

Tax under Division IV of Part IX applies to certain supplies of goods, services and intangible personal property – referred to as "imported taxable supplies" – that are supplied outside Canada and imported without tax under Division II or III applying to the supply or importation. The amendment to section 217, which defines an "imported taxable supply," clarifies the scope of Division IV. Amended section 217 sets out the definition of an imported taxable supply in three parts, each of which deal separately with importations of services, tangible personal property and intangible personal property.

Subclause 77(1)

Drop-shipped Tangible Personal Property

The amendment under subclause 77(1) adds new paragraph (b) to the definition "imported taxable supply" in section 217. This amendment is consequential to the changes to the rules for drop-shipments in amended section 179. Under those rules, a supply of tangible personal property or a service made by a registrant to an unregistered non-resident in respect of tangible personal property drop-shipped by the registrant to another registrant on behalf of the non-resident is deemed to be a supply made outside Canada and therefore is not taxable. However, by virtue of this paragraph, registrants to whom such property is transferred in Canada after March 27, 1991 will be required to self-assess tax under Division IV of Part IX where they do not acquire the property for consumption, use or supply exclusively in the course of their commercial activities. However, self-assessment will be required in respect of a supply of property the physical possession of which is transferred to a registrant on or after the day that is 30 days after ANNOUNCEMENT DATE where the registrant has issued a drop-shipment certificate referred to in paragraph 179(2)(c).

A resident registrant will also be required to self-assess tax under Division IV of Part IX in respect of a passenger vehicle drop-shipped to the registrant by another registrant on behalf of an unregistered non-resident. This rule applies only where the capital cost of the vehicle exceeds the capital cost threshold for income tax purposes and it is acquired for use in Canada as capital property in commercial activities – i.e., where the tax on the cost of the vehicle exceeds the input tax credit that may be claimed, pursuant to section 201, in respect of a passenger vehicle acquired for use as capital property in commercial activities of a registrant.

Subclause 77(2)

Imported Services

Amended paragraph (a) of the definition "imported taxable supply", as set out in subclause 77(2), includes supplies of services (other than zero-rated or prescribed supplies) made outside Canada to a resident person unless the services are excluded under any of subparagraphs (a)(i) to (vi).

The exclusion under subparagraph (a)(i) ensures that residents do not have to self-assess tax on a service supplied to them outside Canada that is acquired exclusively for consumption, use or supply in the course of commercial activities or for use in activities that are engaged in exclusively outside Canada and that are not part of a business or adventure or concern in the nature of trade of the resident in Canada. This exclusion relieves a person from self-assessing tax under Division IV on services in respect of which the person would typically be entitled to claim a full input tax credit. This same exclusion is provided for under the existing definition of "imported taxable supply" in section 217, insofar as that definition includes only property and services acquired for use "otherwise than exclusively in a commercial activity".

The new reference in subparagraph (a)(i) to activities that are engaged in exclusively outside Canada and that are not part of a business or adventure or concern engaged in by the resident in Canada is intended to clarify the existing definition's inclusion of only those properties and services that are acquired for "use in Canada".

New subparagraph (a)(ii) excludes services consumed by an individual outside Canada, such as entertainment services consumed by employees of resident corporations while on business travel outside Canada. This exclusion applies regardless of who the recipient (as defined in subsection 123(1)) of the service is. Here again, this new subparagraph is intended to clarify the meaning of the existing words "for use in Canada" in relation to services for personal consumption. However, Division IV tax will apply to a supply of training services made outside Canada to a resident who is not a consumer, in order to ensure that Canadian suppliers of training services are put on an equal competitive footing with foreign suppliers.

Subparagraph (a)(iii) excludes services to residents in respect of real property situated outside Canada – for example, architectural services in respect of a building located outside Canada. These services are not considered to be for "use" in Canada.

Subparagraph (a)(iv), in effect, relieves residents of the need to self-assess tax under Division IV on a service in respect of tangible personal property situated outside Canada at the time the service is performed. It also excludes services in respect of tangible personal property that is exported from Canada within a reasonable time after the service is performed, where the property is not consumed, used or supplied in Canada after the service is performed and before the exportation of the property.

Subparagraph (a)(v) excludes transportation services supplied to residents outside Canada from Division IV tax, while subparagraph (a)(vi), in effect, relieves from Division IV tax services rendered in connection with, and after the commencement of, criminal, civil or administrative litigation conducted outside Canada. The latter exclusion is consistent with the proposed amendment to Part V of Schedule VI whereby the service of conducting litigation in Canada is considered to be consumed in Canada and subject to tax when supplied to non-residents. The converse is that a service of conducting litigation outside Canada is considered to be consumed outside Canada.

Subclause 77(3)

Imported Intangible Personal Property

New paragraph (c) of the definition "imported taxable supply" includes taxable supplies (other than zero-rated or prescribed supplies) of intangible personal property made to a resident person outside Canada unless the supply is excluded by virtue of any of subparagraphs (c)(i) to (iii).

The exclusion under subparagraph (c)(i) parallels the exclusion under subparagraph (a)(i) of the definition.

Subparagraphs (c)(ii) and (iii) ensure that Division IV tax is not payable if the property may not be used in Canada or if it relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada. These exclusions are consistent with the rules under paragraph 142(2)(c) for determining when supplies of intangible personal property are considered to be made outside Canada.

The amendments under subclauses 77(2) and (3) apply to supplies all the consideration for which becomes due after ANNOUNCEMENT DATE and no part of the consideration for which is paid before that day without having become due.

Clause 78

Supplies Between Branches

ETA
220

The deeming rules under section 220 ensure that Canadian branches of international organizations are required to self-assess tax under Division IV of Part IX on property or services received by them from the non-resident branches of the organization in the same way as they would if the property or services were acquired outside Canada from a separate legal entity and imported for consumption, use or supply in Canada.

Subclause 78(1)

ETA
220(c)

Existing paragraph 220(c) treats property transferred or services rendered by a permanent establishment of a person outside Canada to a permanent establishment of that person in Canada as if the property or services were supplied by the non-resident establishment for consideration equal to the amount used in computing the income of the person for purposes of the *Income Tax Act*. However, the person may choose not to deduct, for income tax purposes, the expense related to the transfer of the property or receipt of the service, in which case there is no value on which to base the GST liability. Therefore, as announced in the press release of September 14, 1992, with respect to property transferred and services rendered after that day, paragraph 220(c) is amended to provide that the value of the consideration for the deemed supply between two permanent establishments in these circumstances is the fair market value of the supply.

Subclause 78(2)

ETA
220(d)

Existing section 220 does not specify when the consideration for a supply, deemed under that section to be made between two permanent establishments, is considered to have become due for purposes of the charging provision in section 218. New paragraph 220(d) is therefore added to provide that the consideration for a deemed supply of property or service to a permanent establishment is considered to have become due and to have been paid at the end of the taxation year of that permanent establishment in which the property was transferred or the service rendered, which is the time at which the accounting for the transaction would ordinarily be made for income tax purposes. This amendment is effective January 1, 1991.

Clause 79

Supplier Liability where Export Certificate Provided

ETA
221(3.1)

New subsection 221(3.1) applies to suppliers who are presented with an export certificate described in new section 221.1. Where a recipient of a supply who has been issued an export certificate (i.e., generally a registrant whose supplies are exclusively export sales) presents the certificate to the supplier and satisfies the other conditions set out in section 1 of Part V of Schedule VI, the supply is zero-rated. The supplier's acceptance of the export certificate is in lieu of obtaining evidence of the exportation of property that would normally be required in order for the supplier to be entitled to make the supply on a tax-free basis. However, if the recipient does not in fact export the property, the supply does not qualify as a zero-rated supply and, in the absence of any relieving provision, the supplier would remain liable for the tax on the supply. Under new subsection 221(3.1), the supplier is relieved of any liability if the supplier did not know or could not reasonably be expected to have known that the property would not be exported.

This amendment is consequential to the addition of new rules for export trading houses set out in new section 221.1, which were announced in the press release of March 27, 1991 and are effective January 1, 1991. This amendment is also effective on that date.

Clause 80

Export Certificates

ETA
221.1

New section 221.1 sets out the conditions under which the Minister of National Revenue may authorize the use of export certificates. As a result of amendments being made to Part V of Schedule VI (the "Export Schedule"), such certificates may be provided as evidence of export for the purposes of qualifying for zero-rating pursuant to section 1 of that Schedule.

New section 221.1 provides that, where the Minister is satisfied that at least 90% of a registrant's business consists of export trading activities – i.e., buying goods in Canada for resale, as is, into the export market – the Minister may authorize the registrant to provide suppliers with a certificate to satisfy the evidence of export requirements in section 1 of the Export Schedule. At the end of each fiscal year during which the certificate is in use, the registrant must ensure that the percentage that the value of the registrant's purchases in Canada for resale on a zero-rated basis pursuant to section 1 is of the value of the registrant's total purchases in Canada for resale does not exceed the percentage that the value of the registrant's export sales is of the value of the registrant's total sales. If this condition is not met, the certificate is deemed to have been revoked. The Minister may also revoke the certificate if the Minister is satisfied that, on a prospective basis, the registrant will no longer satisfy the conditions under which use of the certificate was originally authorized. Generally, an authorization given to a registrant to use an export certificate is valid for three years after which time the registrant may re-apply for a renewal of the certificate. If a certificate of a registrant has been revoked, the registrant would not be entitled to use this system for at least one full fiscal year.

This amendment was announced in the press release of March 27, 1991 and is effective January 1, 1991.

Clause 81

Tax Held in Trust at Time of Bankruptcy

ETA
222

Existing section 222 provides that amounts collected by a person as or on account of GST are considered to be held in trust for Her Majesty in Right of Canada except in the case of a bankruptcy of the person.

Amended section 222 clarifies that amounts held in trust prior to bankruptcy will not be considered to be held in trust after a person becomes bankrupt. However, amounts collected as or on account of GST during the bankruptcy are considered to be held in trust and these amounts are considered to be separate from, and to form no part of, the estate of the bankrupt.

These amendments are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 82

Net Tax

ETA
225

Section 225 sets out the general rules for determining the net tax of a person for a reporting period, including rules related to the claiming of input tax credits.

Subclause 82(1)

ETA
225(5)

Certain supplies of real property are exempt under Part I of Schedule V provided the supplier has not claimed an input tax credit in respect of the property. Subsection 225(5) provides that, once such an exempt supply is made, the supplier cannot subsequently claim the credit.

The amendment to subsection 225(5) clarifies that the input tax credit referred to in the subsection is in respect of the last acquisition of the property, recognizing that a property can be considered, for GST purposes, to have been acquired more than once – the original acquisition and any subsequent deemed acquisition such as occurs in the case of a change in use of the property. As a result, the subsection will not restrict the claiming of input tax credits for reporting periods preceding the last acquisition if these credits are being carried forward. This amendment is effective January 1, 1991.

Subclause 82(2)

ETA
225(6)

New subsection 225(6) provides that a person will not be permitted to file a return in which a net tax refund is claimed after the person becomes a bankrupt for a reporting period that ends prior to bankruptcy unless all returns for reporting periods that ended before the bankruptcy have been filed and all outstanding amounts in respect of those reporting periods have been paid or remitted.

New subsection 225(6) also provides that input tax credits in respect of tax that became payable or was paid prior to a registrant becoming a bankrupt cannot be claimed in returns for reporting periods that end after the registrant became a bankrupt unless all returns for reporting periods that ended before the bankruptcy has been filed and all outstanding amounts in respect of those reporting periods have been paid or remitted.

New subsection 225(6) applies to returns filed after ANNOUNCEMENT DATE.

Clause 83

ETA
226

Net Tax of Non-Registrants

This amendment repeals existing section 226, which is no longer required because of amendments to subsections 225(1) to (3), 228(1) to (3) and 229(1) to (3). These amendments, which are made under clause 190, amalgamate the rules relating to the determination of net tax for registrants and non-registrants.

This change is effective January 1, 1991.

Returnable Beverage Containers

New section 226 sets out the rules for the simplified method of accounting for returnable beverage containers announced in the press release of October 17, 1990. These rules generally provide that, for GST purposes, deposits on returnable beverage containers can be ignored by all but the bottler of the beverage. This means that wholesalers and retailers are not required to remit tax on the deposits they charge and are not entitled to input tax credits in respect of the deposits they pay to their suppliers or refund to their customers. To be eligible for this simplified method, the deposit a supplier charges a purchaser for a beverage container must be no more than the amount the supplier would pay as a deposit for the acquisition of that container. For bottlers of beverages, the operation of the tax will follow the normal rules. They will charge and remit GST on the deposits they charge and claim input tax credits for the tax on the deposits they pay.

Subsection 226(1) "Meaning of returnable container"

The term "returnable container" is defined as a beverage container of a class that is ordinarily acquired by consumers filled and sealed and returned by consumers once they are empty to a retailer or some other person for an amount of money. Beverage containers for zero-rated groceries are excluded from the definition "returnable container" as these containers, by virtue of section 137, take on the same tax status as their contents.

For the purposes of this definition, a "class" of container may be distinguishable on the basis of whether a deposit for that container is refundable in the particular province in which it is sold. A canned soft drink, for example, may be sold with a refundable deposit in some provinces and without a refundable deposit in others. In those provinces where the canned drink is sold with a refundable deposit, the can is a beverage container of a particular class that is different from the "class" of containers in which drinks are sold without a refundable deposit in other provinces.

Subsection 226(2) Separate Supply of Beverage and Container

Subsection 226(2) deems the supply of a container to be separate from the supply of its contents and the consideration for the supply of the container to be that part of the total consideration for the container and the contents that is reasonably attributable to the container. The purpose of these deeming provisions is to segregate the container from the contents so that the rules in subsections 226(3) and (4) can be applied to the container only.

Subsection 226(3) Tax Collectible on Returnable Containers

Subsection 226(3) sets out the general rule that a registrant shall not include any tax that is collected or becomes collectible with respect to supplies of returnable containers in the registrant's net tax calculation. The exceptions to this rule, for bottlers for example, are provided under subsection 226(5).

Subsection 226(4) Input tax Credit for Returnable Containers

Subsection 226(4) sets out the general rule that a registrant may not claim an input tax credit (whether actual or notional) with respect to tax paid or payable on purchases of returnable containers. An exception to this rule arises where a registrant has purchased the container for export or other zero-rated supply, in which case the registrant may claim an input tax credit under the normal rules. Other exceptions to this general rule, for bottlers for example, are provided under subsection 226(5).

Subsection 226(5) Application

Subsection 226(5) provides that a registrant may not use the simplified method for a class of returnable containers if it is the usual practice of the registrant:

- to charge as a deposit for supplies of filled containers of that class, an amount greater than the registrant would pay as a deposit to suppliers for filled containers of that class,

- to charge as a deposit for supplies of empty containers of that class to other registrants an amount greater than the amount the registrant would pay as a deposit to registrants for purchases of empty containers of that class, or

- to pay as a deposit for purchases of empty containers of that class from non-registrants, an amount less than the consideration and tax the registrant charges for supplies of empty containers of that class.

As well, the following persons are not eligible to use the simplified method:

- importers of filled and sealed returnable containers;
- bottlers; and
- persons who engage a bottler to fill their containers with beverages (i.e., persons who do not purchase filled and sealed beverage containers but, instead, hire a bottler to fill and seal their containers, usually under the person's own brand name).

Subsection 226(6) Change in Practice – Ceasing Use of Simplified Method

Subsection 226(6) applies to registrants who, after using the simplified method for returnable containers, no longer qualify to use it – e.g., they fall within one of the exceptions set out in subsection 226(5). This would occur, for example, if a bottle depot began to charge a bottler a greater amount for supplies of empty containers than the depot paid consumers returning the empty containers, rather than charging the bottler a separate handling fee. In these cases, the registrant would be holding, in inventory, returnable containers for which the registrant could not previously claim input tax credits under the simplified method. However, the registrant, having come off the simplified system, would be required to account for tax on any subsequent supplies of these containers. By deeming the registrant to have re-acquired and paid tax on the container, subsection 226(6) allows the registrant to claim an input tax credit calculated on the price paid on the acquisition of the container.

Subsection 226(7) Commencing Use of Simplified Method

Subsection 226(7) deals with registrants who become eligible to use the simplified method of accounting for returnable containers. Since these registrants will have claimed input tax credits on their inventory of returnable containers and will not be remitting any tax on subsequent supplies, subsection 226(7) deems the registrant to have collected and paid tax on the containers in inventory. As a result, the registrant will be required to remit tax on the containers equal to the input tax credits previously claimed.

Subsections 226(8) and (9) Supplies under Section 156 or 167

Subsections 226(8) and (9) deal with supplies of returnable containers for which tax does not have to be remitted because the supplies are between members of a closely related group under section 156, or are part of the sale of a business in circumstances in which a non-taxable roll-over of the business is allowed under section 167. Subsection 226(8) deals with the case where a supplier would, but for section 156 or 167, have had to charge tax on the supply of the returnable container because the supplier did not meet the conditions for using the simplified method (and, accordingly, claimed an input tax credit for the container in the normal manner) and the recipient will not have to charge tax because the recipient is using the simplified method. In this case, the recipient is required to remit tax calculated on the deposit the recipient would charge for the container. Conversely, where the supplier otherwise would not have had to charge tax on the containers under the simplified method and the recipient does not qualify to use that method, the recipient is entitled to claim an input tax credit calculated on the deposit the recipient would charge for the container.

New section 226 is effective January 1, 1991.

Clause 84

Election for Streamlined Accounting

ETA
227(2)(c)(ii)

Subparagraph 227(2)(c)(ii) requires that an election made under section 227 by a registrant that is a quarterly or monthly filer be filed with the Minister of National Revenue on or before the due date of the return of the registrant for the reporting period in which the election takes effect.

The subparagraph is amended to provide that the Minister may accept an election under section 227 filed after this day by a registrant that is a monthly or quarterly filer, upon application by the registrant.

This provision is intended to facilitate the use of streamlined accounting by registrants that are quarterly or monthly filers by allowing them to use one of the streamlined accounting methods where they have failed to file an election by the specified due date. This provision parallels the rule for annual filers in subparagraph 227(2)(c)(i). The amendment is effective January 1, 1991.

Clause 85

Net Tax Remittance

ETA
228

Subclause 85(1)

ETA
228(4)

Subsection 228(4) deals with tax payable on the purchase of real property from a person who, under subsection 221(2), is not required to collect tax on the sale. In this case, the purchaser is required to remit any tax payable on the purchase directly to the Receiver General – not to the supplier of the real property – and to file a return in the prescribed form, with the Minister of National Revenue.

The amendment to subsection 228(4) addresses the situation where a person who is deemed to have made a supply of real property (e.g., a builder who self-supplies real property under section 191) is thereby deemed to have collected tax that the person is required to include in the person's net tax calculation. Because the person is also considered to have received the deemed supply, it is not clear whether the person is also required to account for tax under subsection 228(4) as a recipient.

The amendment to subsection 228(4) clarifies that a person who is deemed to have made and received a supply of real property is not also required under this subsection to remit the tax on the deemed sale.

This amendment is effective January 1, 1991.

Subclause 85(2)

ETA
228(5)

Subsection 228(5) is repealed consequential to amendments to subsection 228(4), provided under clause 190, which amalgamate the rules for remittance of tax by registrants and non-registrants.

Clause 86

Certified Institutions

ETA
230.1

In the November 5, 1991 press release it was announced that non-profit organizations that were certified under the former federal sales tax (FST) system pursuant to Part XIV of Schedule III to the Act would receive a special GST credit over the four year period from the beginning of 1991 to the end of 1994. Under the previous system, these organizations were certified because they employed mentally or physically disabled individuals in the manufacturing of goods. This enabled them to purchase materials for manufacturing, and to sell manufactured goods, exempt of federal sales tax. New section 230.1 provides for this special credit to assist these organizations.

Under the GST, these certified institutions are treated like other suppliers –i.e., they collect and remit 7% tax on their taxable supplies and claim input tax credits for tax paid on purchases. As a result of the change-over to the GST, however, they faced significant adjustment costs and no longer enjoyed the special treatment accorded them under the FST relative to competitors who supplied similar goods on a taxable basis. The intent of this special measure is to provide certified institutions with short-term assistance in adjusting to the GST because of their unique circumstances under the former sales tax regime.

To qualify for this special credit, these certified institutions must be registered for the purposes of the GST – i.e., they have to be engaged in making supplies of manufactured goods on which they are required to charge tax. The provision reduces the amount of tax that they are required to remit in respect of their sales of manufactured goods during the period 1991 to 1994. They are still required to collect tax on supplies and are entitled to claim input tax credits with respect to inputs for use in making those supplies. However, section 230.1 allows them to claim an additional credit based on the amount of GST collectible on the manufactured goods.

This special credit is available only with respect to GST collectible on manufactured goods. Certified institutions are not entitled to claim the special credit in respect of tax collectible on services since they did not receive the same special treatment with respect to services under the FST system.

The special credit is calculated as a percentage of GST collectible on sales of goods manufactured by disabled individuals. The percentage applies on a declining basis as follows:

- 100 per cent of GST that became collectible in 1991 on manufactured goods;
- 75 per cent in 1992;
- 50 per cent in 1993; and
- 25 per cent in 1994.

Clause 87

Tax Adjustments

ETA
232(3)

Section 232 sets out the rules relating to refunds or adjustments of tax.

This amendment to subsection 232(3) allows not only credit notes issued by suppliers, but also debit notes issued by recipients, to be used to document the tax adjustment. The information that is currently required for credit notes under the *Credit Note Information Regulations* will also be required for debit notes.

This amendment is pursuant to the press release of March 27, 1991 and is effective January 1, 1991.

Clause 88

Patronage Dividends

ETA
233

Section 233 sets out the rules whereby persons can choose to basically ignore patronage dividends issued by them for GST purposes or treat them as either individual price and tax adjustments to each recipient or as aggregate price and tax adjustments. The amendments to section 233 clarify the amount of these adjustments and the rules governing elections made under this section.

Subclause 88(1)

ETA
233(1)

Where an election is not in effect under section 233, the patronage dividends issued by a person are treated as aggregate price and tax adjustments. These tax adjustments are determined on the basis of the portion of the person's total taxable supplies (other than sales of capital properties) in the immediately preceding fiscal year that were non-zero-rated supplies. This is the portion determined under subsection 233(1) and is referred to as the "specified amount".

Under existing subsection 233(1), the specified amount is calculated using tax-excluded values. Amended subsection 233(1) provides that the specified amount in respect of a patronage dividend is to be calculated using tax-included amounts. This measure ensures that tax adjustments, arising from the payment of patronage dividends, are not understated.

This change was announced in the press release of March 27, 1991 and applies to patronage dividends paid after March, 1991.

Subclauses 88(2) and (3)

ETA
233(2)(a)(ii) and 233(3)

Subparagraph 233(2)(a)(ii) and subsection 233(3) are amended to clarify that an election made under section 233 applies to all patronage dividends paid by a person in a fiscal year. Therefore, all patronage dividends paid by a person in a fiscal year are treated in the same manner for GST purposes. This treatment is consistent with administrative practice and applies as of January 1, 1991.

In order to streamline the administration of the tax for businesses, the amendment also eliminates the requirement to file an election form or revocation form relating to an election under this section with the Minister of National Revenue. A registrant will of course still be required to maintain such records as would enable a determination of whether the registrant has elected for the treatment under subparagraph 233(2)(a)(ii) or subsection 233(3). This change was announced in the press release of April 27, 1992 and is effective for elections or revocations made after April 26, 1992.

Subclause 88(4)

ETA
233(4) to (6)

Under existing section 233, there is no guideline as to when an election for a fiscal year is required to be made. New subsection 233(4) clarifies that in order for an election under section 233 to apply to a particular patronage dividend paid by a person in a fiscal year, the election must be made before any patronage dividends are paid by the person in that fiscal year. This change was announced in the press release of November 5, 1991 and applies as of November 6, 1991.

New subsection 233(5) provides that a person may revoke an election previously made under section 233. Existing section 233 does not provide for such a revocation. In order for a previously-filed election not to apply to a particular patronage dividend paid by a person in a fiscal year, the revocation of that election must be made before any patronage dividends are paid by the person in that fiscal year. This change was announced in the press release of November 5, 1991 and is effective November 6, 1991.

New subsection 233(6) clarifies that, for the purposes of section 233, a patronage dividend is considered to be paid when it is declared. This change is also effective November 6, 1991.

Clause 89

Deduction Where Rebate Paid or Credited

ETA
234

Section 234 allows certain suppliers who have paid or credited an amount to a recipient on account of a rebate to which the recipient is entitled under Part IX to deduct that amount in determining the supplier's net tax.

The amendment to subsection 234(1) is consequential to the introduction of new section 254.1 and allows a supplier who has credited or paid an amount on account of a rebate to a person in accordance with subsection 254.1(4), to deduct the amount in determining the supplier's net tax.

The amendment also adds new subsection 234(2) which is consequential to the amendment to subsection 252(3) and the introduction of new subsections 252.1(8), 252.4(2) and 252.4(4). New subsection 234(2) allows a supplier who has credited or paid an amount to a person under those subsections in respect of a convention or non-resident rebate, to deduct the amount paid or credited in determining the supplier's net tax.

The amendment to section 234 is effective January 1, 1991.

Clause 90

Leased Passenger Vehicles

ETA
235

The purpose of section 235 is to recapture input tax credits in respect of leased passenger vehicles where the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*.

The amendment clarifies that an amount will not be added to a registrant's net tax under this section where tax did not apply to the lease payments by virtue of the grandfathering provision for automobiles in subsection 340(3) or where the registrant was not entitled to claim an input tax credit in respect of the vehicle because of section 170. This measure prevents double taxation in these instances.

This amendment was announced in the press release of March 10, 1992 and is effective January 1, 1991.

Clause 91

Meals and Entertainment Expenses

ETA
236

Existing section 236 provides for a recapture of 20% of the total of all input tax credits that a person may claim in a fiscal year in respect of meals and entertainment expenses. This ensures that the GST treatment of meals and entertainment expenses is consistent with the income tax rules for the deductibility of these expenses whereunder a registrant is entitled to deduct only 80% of an amount paid or payable in respect of entertainment services, food or beverages.

The section is amended by replacing the reference therein to section 67.1 of the *Income Tax Act* with a reference to subsection 67.1(1) of that Act. This is to avoid referencing subsection 67.1(2) of that Act which sets out exceptions to the rule under subsection 67.1(1).

The amendment also provides that only those input tax credits which have been claimed, rather than those which may be claimed, by a registrant in a fiscal year in respect of meals and entertainment expenses are subject to the recapture provision contained in this section. This change ensures that an input tax credit in respect of meals and entertainment expenses is not recaptured under this section before the year in which it is claimed.

The amendment confirms current administrative practice and is effective January 1, 1991.

Clause 92

Instalments for Annual Filers

ETA
237(1) to (4)

Section 237 sets out the rules relating to the payment of quarterly instalments by a registrant who has opted for annual filing.

The amendment implements a number of measures to streamline the rules governing the payment of instalments. These changes are intended to make annual filing a more attractive option for registrants with annual taxable sales of $500,000 or less. By facilitating annual filing, these measures should assist registrants by reducing their administrative costs.

Subsection 237(1) Due Date For Instalments

The amendment moves back the due date for quarterly instalments by one month. Whereas under existing section 237 instalments are due on or before the last day of each fiscal quarter, the amended section provides that instalments will be due within one month after the end of each fiscal quarter. With this change, the quarterly instalments payable by a registrant who is an annual filer will be due at the same time as net tax remittances are due from quarterly filers.

Subsection 237(2) Instalment Base Calculation

Minor wording changes are being made in subsection 237(2) for clarification purposes only and are consistent with the current administrative interpretation of the subsection.

Subsection 237(3) Minimum Instalment Base

The amendment increases the minimum instalment base from $1,000 to $1,500. The effect of this change is that registrants who are annual filers and who have net tax for a year of less than $1,500 will not be required to remit instalments for that year or the subsequent year, which will improve their cash flow position and reduce their paperwork.

Subsection 237(4) Negative Net Tax

Subsection 237(4) is repealed as it is unnecessary given the rule in section 125 regarding negative amounts. Furthermore, it could lead to incorrect results when applied to the individual amounts of net tax included in determining the instalment base under the formulae in subsection 237(2).

These changes to section 237 were announced in the press release of April 27, 1992 and are effective for fiscal years beginning on or after that date.

Clause 93

Filing Required by Non-Registrants

ETA
238(2)

Subsection 238(2) requires non-registrants to file a return for each reporting period for which tax is remittable by them.

The amendment changes the reference to "tax" in this subsection to a reference to "net tax", ensuring that non-registrants, like registrants, need only remit the difference between the total of all amounts collected as or on account of tax for a period and any adjustments (e.g., for bad debts or reductions in consideration) taken in that period. This change, which applies as of January 1, 1991, coincides with the amendments to subsections 225(1) to (3), 228(1) to (3) and 229(1) to (3) which result in an amalgamation of the rules for registrants and non-registrants. The latter amendments are made under clause 190.

Clause 94

Rules for Registration

ETA
240

Section 240 sets out the rules regarding registration for GST purposes.

Subclause 94(1)

Subsection 240(1) Registration Required

Subsection 240(1) is amended to clarify that every person who makes a taxable supply in Canada (other than small suppliers and other persons mentioned in paragraphs 240(1)(b) and (c)) is required to be registered and therefore is a "registrant" within the meaning of subsection 123(1) as of the time the first taxable supply in Canada is made by the person. This is so even if the person has not yet applied to the Minister of National Revenue for registration. The existing reference in subsection 240(1) to the thirty-day period is a reference to the period allowed for filing the application for registration with the Minister. For clarity, this filing requirement is being set out on in a new separate subsection – subsection 240(2.1). This clarification is consistent with administrative practice and is effective January 1, 1991.

Subsection 240(1.1) Registration Required for Small Supplier Taxi Operators

In accordance with the announcements concerning taxi operators in the press release of December 18, 1990, the amendment adds new subsection 240(1.1) which requires all regulated small supplier taxi operators in Canada to register, thereby ensuring that all regulated taxi fares in Canada are subject to tax. In the absence of this amendment, many taxi operators would not be required to register, by virtue of their qualifying as small suppliers, and consequently many taxi fares would not be taxed. The amendment eliminates the competitive inequities which would otherwise have been created between registered and unregistered taxi operators.

The registration of a small supplier taxi operator under subsection 240(1.1) will apply only in respect of the commercial activities of the operator which relate to the taxi business, unless the Minister approves an application filed by the operator under new subsection 240(3.1) to have that registration also apply in respect of other commercial activities engaged in by the operator in Canada. The Minister, upon approving such an application, is required to notify the operator in writing of the date on which the registration will so apply.

Subsection 240(2) Non-resident Performers etc.

The amendments to this subsection parallel the clarification to subsection 240(1) which will refer to a person's requirement "to be registered" rather than to a requirement to "apply to be registered".

Subsection 240(2.1) Application for Registration

As noted above, for clarification purposes, the requirement for registrants to file an application for registration with the Minister of National Revenue is moved from existing subsection 240(1) to new subsection 240(2.1) and a separate paragraph is added regarding taxi operators, consequential to the introduction of special registration rules for taxis under new subsection 240(1.1).

This amendment is effective January 1, 1991.

Subsection 240(3) Voluntary Registration

Existing subsection 240(3) permits persons engaged in a commercial activity in Canada and certain other specified persons to apply to the Minister of National Revenue to be registered for GST purposes. The existing subsection overlaps to some extent with subsection 240(1). The amendment simply clarifies that subsection 240(3) applies only to persons not otherwise required to register.

This amendment is effective January 1, 1991.

Subsection 240(3.1) Extended Registration for Small Supplier Taxi Operators

In accordance with the rules for taxi operators announced in the press release of December 18, 1990, small suppliers carrying on a taxi business are required to be registered for GST purposes, but only in respect of their taxi businesses. New subsection 240(3.1) provides such operators the option of extending the application of their registration to their other commercial activities, on request in writing filed with the Minister of National Revenue.

This amendment is effective January 1, 1991.

Subclause 94(2)

Registration of Holding Companies

ETA
240(3)(d)

New paragraph 240(3)(d) permits the registration of a resident parent corporation that has no commercial activity but holds a related corporation's shares or debt deemed under subsection 186(3) to be property acquired by the parent for use exclusively in the course of commercial activities. This paragraph will also permit the registration of resident corporations that are acquiring or propose to acquire all or substantially all of the capital stock of another corporation. In the absence of this amendment, corporations that are holding companies or companies established to acquire other corporations and that have no commercial activities would not be able to register to benefit from the rules in section 186, which entitle them to input tax credits for tax payable on their investment-related costs.

This amendment comes into force on Royal Assent.

Subclause 94(3)

Suppliers of Prescribed Property

ETA
240(4)

Subsection 240(4) deems non-resident persons to be carrying on business in Canada in certain circumstances. As a result, those persons are required to register for GST purposes under subsection 240(1), unless they are small suppliers. This subsection is amended by extending its application to persons resident in Canada.

This amendment is effective January 1, 1993.

Clause 95

Registration of Small Supplier Taxi Operators

ETA
241(2)

Section 241 provides authority for the Minister of National Revenue to register a person applying for registration for GST purposes.

The amendment adds subsection 241(2), which identifies when the registration of a small supplier taxi operator applies, or ceases to apply, to the commercial activities of the operator which are not part of the taxi business. Pursuant to new subsection 171.1(1), a small supplier taxi operator will be treated as a small supplier in respect of commercial activities that are not part of the taxi business unless the operator applies to the Minister, under new subsection 240(3.1), to have the registration apply to those non-taxi commercial activities. As well, pursuant to new subsection 242(2.1), a small supplier taxi operator whose registration applies to all of the operator's commercial activities can choose to de-register in respect of the non-taxi commercial activities.

The amendment is consequential to the rules for small supplier taxi operators which were announced in the press release of December 18, 1990. The amendment is effective January 1, 1991.

Clause 96

Cancellation or Variation of Registration

ETA
242

Section 242 sets out the rules governing the cancellation of the registration of a person for GST purposes.

Subclause 96(1)

ETA
242(2)

This amendment, excluding taxi businesses from the application of subsection 242(2), is consequential to the requirement, announced in the press release of December 18, 1990, that all persons carrying on a taxi business in Canada be registered in respect of that business.

Subclause 96(2)

ETA
242(2.1) and (3)

The amendment adds new subsection 242(2.1), which allows a small supplier taxi operator required to be registered under subsection 240(1.1), to have that registration cease to apply to the commercial activities of the operator which are not part of the taxi business. This will permit a registered small supplier taxi operator to be treated as a small supplier in respect of the operator's commercial activities which are not part of the taxi business.

Specifically, new subsection 242(2.1) provides that after receiving a request from a small supplier taxi operator to have the operator's registration varied (i.e., to have the registration cease to apply to the operator's non-taxi commercial activities), the Minister of National Revenue is required to so vary the registration effective on the first day of a fiscal year of the operator and to notify the operator in writing of the effective date of the variation.

The effective date of the variation in registration must be at least one year after the registration last began to apply to all of the operator's commercial activities in Canada. This provision is consistent with the rule which prevents the registration of a small supplier from being cancelled sooner than one year after that registration became effective.

These amendments are consequential to the rules for small supplier taxi operators which were announced in the press release of December 18, 1990 and are effective January 1, 1991.

Clause 97

Fiscal Quarters and Months

ETA
243

Section 243 sets out the rules for determining the fiscal quarters and fiscal months of a person which, in turn, are relevant for purposes of determining reporting periods under section 245. The amendment provides persons with added flexibility in determining their fiscal months and quarters for GST purposes. It also requires persons to notify the Minister of National Revenue in prescribed form by specified dates of their fiscal periods. Where a person does not comply with the requirements of this section, the amendment provides the Minister with the authority to determine the person's fiscal periods for GST purposes.

Repeal of Existing Subsections 243(1) and (2)

Existing subsections 243(1) and (2) require a person whose fiscal year is the calendar year to have fiscal quarters and months that are calendar quarters and months. This requirement is removed effective January 1, 1991. As a result, persons with fiscal years that are calendar years will have the same flexibility in determining their fiscal periods for GST purposes (under new subsections 243(1) and (2)) as is afforded to persons with fiscal years that are not calendar years.

Subsection 243(1) Fiscal Quarters

The rules set out in amended subsection 243(1) essentially replicate those in existing subsection 243(2) except that the amended subsection extends the maximum length of a fiscal quarter from 114 days to 119 days, effective January 1, 1991.

Subsection 243(2) Fiscal Months

The rules of amended subsection 243(2) essentially replicate those in existing subsection 243(4) except that, effective January 1, 1991, the amended subsection permits a person to have, in certain circumstances and upon making a request in writing to the Minister of National Revenue, fiscal months that are shorter than 28 days or longer than 35 days. This added flexibility in determining fiscal months will, in many cases, accommodate existing business practices.

Subsection 243(3) Notification

Amended subsection 243(3) requires registrants to notify the Minister of National Revenue in prescribed form by a specified date of their fiscal months and quarters for a fiscal year.

Subsection 243(4) Failure to Comply

Amended subsection 243(4) provides the Minister of National Revenue with the authority to determine a person's fiscal months and quarters for GST purposes if the person fails to determine them in accordance with the provisions of section 243 or, where the person is a registrant, the person fails to notify the Minister by a specified date of those fiscal months and quarters. In this case, the Minister is required to notify the person in writing of the Minister's determination.

These changes to subsection 243, with the exception of the extension of the maximum length of a fiscal quarter, were announced in the press releases of March 27, 1991 and November 5, 1991. Persons who complied with the existing rules or who, prior to November 1991, provided the Minister with the information required under new subsection 243(3), will be considered to have complied with the rules set out in amended section 243.

Clause 98

Election for Fiscal Year

ETA
244

Section 244 permits registrants to elect to have fiscal years that are calendar years for GST purposes even though their taxation year for income tax purposes is not the calendar year.

Subclause 98(1)

ETA
244(2)

This amendment enables an individual or trust that is a member of a partnership to elect to have a fiscal year for GST purposes which is the partnership's fiscal period for income tax purposes.

This change is consistent with administrative practice and is effective January 1, 1991.

Subclause 98(2)

ETA
244(4)(c)

This amendment requires a person to file an election or a revocation of an election for a fiscal year with the Minister of National Revenue not later than the day the election or revocation becomes effective. This change is consequential to an amendment to section 243 whereby persons are required to inform the Minister of the particulars of their fiscal periods in a fiscal year by the beginning of that fiscal year.

This amendment is effective January 1, 1992.

Clause 99

Reporting Periods

ETA
245(2)(b)(i) and (2)(c)

Subsection 245(2) provides rules by which registrants determine their reporting periods for GST purposes. Under existing subsection 245(2), a listed financial institution (as defined in subsection 123(1)) is an annual filer unless it files an election to become a quarterly or monthly filer. Subsection 245(2) is amended so that this rule will not apply to persons who are listed financial institutions only as a result of having made an election under section 150.

This amendment is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 100

Threshold Amount for Fiscal Year or Fiscal Quarter

ETA
249

Section 249 provides the rules for determining a person's "threshold amount" for the purpose of establishing that person's reporting period for GST purposes. Section 249 is amended to exclude from the calculation of a person's threshold amount the consideration for supplies made outside Canada and zero-rated exports by the person or an associate of the person. This change will allow quarterly or annual filing for numerous persons, particularly non-resident registrants, who are currently required to be monthly filers by virtue of having taxable sales worldwide which exceed $6 million but who have only a small amount of taxable sales in Canada. This measure is intended to reduce registrants' paperwork and administrative costs.

Importantly, this change will not apply for purposes of the small supplier threshold – i.e., the requirement to register will continue to be based on the total worldwide taxable sales of the person and any associates of the person.

These changes apply in determining the threshold amounts for fiscal years or fiscal quarters beginning after ANNOUNCEMENT DATE.

Clause 101

Non-resident Rebate

ETA
252

Section 252 currently provides for rebates to non-resident persons in respect of exported goods and certain short-term accommodation acquired by non-residents while visiting Canada.

The amendments to section 252 expand the scope of the non-resident rebate, including the introduction of a rebate to an unregistered non-resident person for tax paid on goods or processing services for use in the production of goods for export.

In addition, the amendments provide for a rebate, as an alternative to the flow-through provision available to an unregistered non-resident person under section 180, for tax paid on property drop-shipped to a registrant or on a processing service in respect of such goods of a non-resident person.

Subsection 252(1) Rebate for Exported Goods

A number of minor wording changes are made to subsection 252(1) for clarification purposes only, including the substitution of the reference to the 60-day period after "receiving the supply" of property with a reference to the 60-day period after the property "is delivered" to the recipient. A reference to new section 252.2 is added consequential to the substitution of that section for existing subsection 252(3).

Subsection 252(2) Rebate for Artistic Works Produced for Export

The rules of existing subsection 252(2) are incorporated into new section 252.1 and new subsection 252(2) provides for a rebate to be paid to an unregistered non-resident person (other than a consumer) for the tax paid on goods or services acquired by the non-resident for use or consumption exclusively in the production of certain artistic works for export.

This measure is intended to ensure that exports of these types of intangible personal property are relieved from tax in the same way as are exports of tangible personal property.

Subsection 252(3) Rebate for Goods or Services Used in Production of Goods for Export

As noted above, the rules of existing subsection 252(3) are incorporated into new section 252.2. New subsection 252(3) provides that an unregistered non-resident person (other than a consumer) may claim a rebate for the tax paid on goods or services acquired by the non-resident for use or consumption exclusively in the production of goods for export. This measure ensures that exports of tangible personal property are fully relieved of tax.

Subsection 252(4) Rebate for Goods Sold by Residents to Registrants

The rules under existing subsection 252(4) are incorporated into new section 252.1. New subsection 252(4) applies where an unregistered non-resident person acquires tangible personal property or a processing service in respect of such a property, supplies the property to a registrant and the property is drop-shipped to the registrant. Under subsection 252(4), the non-resident may claim a rebate for the tax paid on the supply by the registrant to the non-resident that is, in these circumstances, deemed under section 179 to have been made in Canada for consideration. This measure provides non-residents with an alternative to the flow-through provision for drop-shipments available under section 180.

Subsection 252(5) Processing Services

The rules of existing subsection 252(5) are replaced by new provisions under section 252.1.

New subsection 252(5) defines a "processing service" for the purposes of subsections 252(3) and 252(4).

Subsection 252(6) Assignment of Right to Rebate

This provision permits a non-resident person entitled to a rebate under any of subsections 252(2) to (4) in respect of a supply to assign the right to the rebate to the supplier. Where an assignment is made and the supplier credits the non-resident an amount equal to the rebate, the supplier is entitled to claim a deduction under subsection 234(2) equal to the amount so credited and the non-resident person is not entitled to any additional rebate, refund or remission of the tax in respect of the supply.

The amendments to section 252 described above are pursuant to the press release of December 18, 1990 and are effective January 1, 1991. To avoid any overlap with the revised drop-shipment rules in section 179 on an ongoing basis, subsections 252(3) to (5) are repealed on THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE and subsection 252(6) is renumbered as subsection 252(3) as of that date.

Rebate in Respect of Tax on Accommodation Supplied to Non-Residents

ETA
252.1

New section 252.1 clarifies and expands upon the existing provisions in subsections 252(2), (4) and (5), concerning rebates of tax paid on short-term accommodation made available to non-resident consumers.

The new section broadens the definition of tour packages eligible for the accommodation rebate and expands the scope of the provision under which suppliers may claim the rebate on behalf of a non-resident person. The new section also clarifies the amount of an accommodation rebate to which a person is entitled and provides a streamlined method for individuals to calculate their rebates. This section also entitles a registrant who credits to a non-resident person a rebate in respect of a supply of short-term accommodation or a tour package to deduct the amount so credited in determining the registrant's net tax.

Subsection 252.1(1) Definitions

This subsection defines the term "tour package" for the purposes of the non-resident accommodation rebate. Excluded from the definition is a convention facility and related convention supplies (as defined in subsection 123(1)). Special rebates in respect of the latter expenses are provided for under new sections 252.4 and 252.5 as announced in the press release of December 18, 1990. The convention-related rebates are effective January 1, 1991 and, therefore, the new definition "tour package" in subsection 252.1(1) likewise applies as of that date.

New subsection 252.1(1) also broadens the definition of "short-term accommodation" eligible for an accommodation rebate to include any type of overnight shelter (other than shelter on a train, trailer, boat or structure that is capable of, or is readily adaptable for, self-propulsion) included in a tour package that also includes meals or food and the services of a guide. This extension was announced in the press release of November 5, 1991 and applies to tour packages where short-term accommodation included in the tour package is made available after that date.

Subsection 252.1(2) Accommodation Rebate for Non-Residents

This subsection provides for rebates to non-residents in respect of short-term accommodation made available to non-resident consumers of the accommodation. Specifically, a rebate is available to non-resident persons who acquire short-term accommodation or tour packages that include short-term accommodation, if the accommodation is not for use in the course of a business and is not for re-supply in the ordinary course of a business (i.e., not acquired, for example, by a company for employees travelling on business or by a tour operator).

On the other hand, if a non-resident business were to acquire short-term accommodation or a tour package that includes short-term accommodation for the purpose of making it available to an individual, including an employee, entirely for non-business use, the business would be entitled to a rebate. This change will be of particular benefit to the incentive travel industry. It was announced in the press release of September 14, 1992 and is effective January 1, 1991.

Subsection 252.1(3) Accommodation Rebate for Unregistered Non-Resident Tour Operators

This subsection entitles an unregistered non-resident tour operator to a rebate in respect of short-term accommodation that the operator acquires and resells to non-resident persons at a place outside of Canada where the tour operator or the operator's agent is conducting business. A rebate may be claimed by an unregistered non-resident tour operator only to the extent that the accommodation is ultimately made available to a non-resident consumer.

It should be noted that an unregistered non-resident tour operator who claims an accommodation rebate under this section may not use the streamlined method of calculating rebates provided for non-resident individuals under new subsections 252.1(4) and 252.1(5) – i.e., they may not calculate their rebate using the $5 per night formula.

The provisions contained in new subsection 252.1(3) were announced in the press release of December 17, 1990 and the subsection is effective January 1, 1991.

Subsections 252.1(4) Streamlined Calculation of Rebate for Accommodation Only

This subsection provides a simplified method that non-resident individuals and other persons eligible for a rebate under subsection 252.1(2) may use to calculate their rebates in respect of a supply of short-term accommodation only. The rebate in this circumstance may be determined on the basis of $5 for each night of short-term accommodation available under the agreement for the supply. Where a person uses this streamlined method to calculate a rebate under this section, this formula must be used for all supplies, included in a single claim, of short-term accommodation that is not part of a tour package.

This provision was announced in the press release of November 5, 1991 and applies to rebate applications filed after that date.

Subsection 252.1(5) Calculation of Accommodation Rebate in Respect of a Tour Package

This subsection sets out the rules for calculating a rebate in respect of short-term accommodation included in a tour package. Included in these rules is a streamlined method of calculating rebates for use by non-resident individuals and other persons entitled to a rebate under subsection 252.1(2).

In general, the rebate in respect of short-term accommodation included in a tour package is equal to 50% of the tax paid on the tour package, pro-rated by the fraction of the total number of nights spent in Canada during the tour that short-term accommodation is provided in Canada as part of the package.

A streamlined method for calculating the rebate is provided whereby the rebate is determined on the basis of $5 for each night of short-term accommodation in Canada included in the tour package. This measure will relieve non-resident individuals of the need to make more detailed calculations in order to claim a rebate.

This provision was announced in the press release of November 5, 1991 and applies to rebate applications filed after that date.

Subsections 252.1(6) and (7) Multiple Supplies of Accommodation for the Same Night

These subsections provide that a person may not, under subsection 252.1(4) or paragraph 252.1(5)(a), claim $5 for more than one supply from the same supplier of short-term accommodation for any given night. This restriction is intended to avoid the administrative complexity that would otherwise be associated with allowing individuals to claim rebates based on the number of "units" of accommodation supplied. Of course, non-residents always have the option of claiming the actual amount of tax on all short-term accommodation purchased if they choose not to claim the flat $5-per-night rebate.

These subsections are consequential to the addition of new subsections 252.1(4) and (5). They apply to rebate applications filed after November 5, 1991.

Subsection 252.1(8) Deduction for Rebate Credited by a Registrant

This new subsection also provides for a streamlined system of rebate assignments that, in many cases, will relieve non-resident tour operators and individuals of the need to file applications in order to obtain the benefit of the rebates. Under this streamlined system, where a supplier of accommodation credits the non-resident tour operator or individual the amount of a rebate to which the operator or individual would be entitled if they were to file the necessary applications, the supplier is entitled to claim a deduction from net tax equal to the amount of the rebate so credited. Therefore, the non-residents avoid filing applications and suppliers of accommodation are not required to obtain written assignments in order to claim a rebate on behalf of a non-resident tour operator or individual.

It should be noted, however, that while a registered supplier may credit a non-resident tour operator for a rebate, registrants may not, under this subsection, credit other types of non-resident businesses or organizations for an accommodation rebate.

A registrant may credit a non-resident individual who is a consumer for a rebate in respect of a supply of short-term accommodation or a tour package that includes short-term accommodation in circumstances where the consumer would otherwise be entitled to the rebate and where:

- the payment for the supply is made at a place outside Canada where the registrant or the registrant's agent is conducting business or;

- in the case of short-term accommodation included in a tour package that also includes goods or services (other than meals or room-related charges), the consumer pays a minimum 20% deposit at least 14 days in advance of the accommodation being made available. This payment must be traceable to a foreign financial institution, for example, by means of a personal cheque or credit card.

This streamlined system of assigning rebates was first announced in the press release of December 18, 1990 and is effective January 1, 1991. However, the change permitting registrants to claim rebates on behalf of individuals, in respect of a complete tour package where a 20% deposit is paid at least 14 days in advance, was announced in the press release of November 5, 1991 and applies to tour packages in respect of which an amount of consideration is paid after that date.

Registrants who credit a recipient for an accommodation rebate may not use the streamlined method of calculating rebates that is available to non-resident individuals under new subsections 252.1(4) and 252.1(5) – i.e., registrants may not calculate the amount credited to a recipient and deducted from their net tax using the $5-per-night formula. This measure is consistent with current administrative practice and is effective November 5, 1991.

Subsection 252.1(9) Deposit Paid by Credit Card or Charge Card

This subsection provides that, where payment of a minimum 20% deposit referred to in subsection 252.1(8) is made by credit card, the deposit is not considered to be paid until the registered supplier's account is actually credited for the amount of the deposit.

This measure was announced in the November 5, 1991 press release and is effective on that date.

Restrictions on Claiming Non-Resident Rebates

ETA
252.2

New subsection 252.2 replaces existing subsection 252(3). As announced in the press release of December 18, 1990, the minimum amount that may be claimed in an application is lowered from $20 to $7, effective January 1, 1991. In accordance with announcements in the press release of November 5, 1991, the maximum claim per application in respect of short-term accommodation rebates based on the $5-per-night formula is set at $75. This restriction applies to applications filed after November 5, 1991. Similarly, the total of all rebates included in an application, in respect of supplies of tour packages that include short-term accommodation and that are determined using the $5 per night formula, may not exceed $75.

Rebate for Non-Resident Exhibitors at Conventions

ETA
252.3

The amendment adds new section 252.3, which provides that an unregistered non-resident exhibitor at a convention is entitled to a rebate for the tax paid in respect of the use of the convention facility and on any related convention supplies acquired by the exhibitor in relation to the convention.

This amendment is pursuant to the changes to the rules for conventions, which were announced in the press releases of December 18, 1990 and May 15, 1991, and is effective January 1, 1991.

Rebate in respect of a Foreign Convention

ETA
252.4

New section 252.4 provides for rebates of tax paid on supplies or importations of related convention supplies and supplies of the use of convention facilities. Several terms used in this section, such as "sponsor", "foreign convention", "related convention supplies" and "organizer", are newly defined in subsection 123.(1).

Where sponsors or unregistered organizers of foreign conventions acquire supplies of convention facilities or related convention supplies from registrants who supply the convention facilities or short-term accommodation in connection with the convention, the sponsors or organizers, may, in effect, assign their right to a rebate in respect of those supplies to the suppliers. Where a sponsor acquires a convention facility or related convention supplies from a registrant who is the organizer of the convention, the sponsor may likewise, in effect, assign the right to a rebate in respect of that supply to the registered organizer.

However, registrants will not be required to obtain written assignments in order to claim the rebate on behalf of a sponsor or unregistered organizer of a foreign convention. Rather, where a registrant who is an organizer of a foreign convention, a supplier of a convention facility or a supplier of short-term accommodation makes a supply of a convention facility or related convention supplies in the circumstances described above, the registrant may credit a sponsor or unregistered organizer for the amount of the rebate they would otherwise be entitled to claim in respect of that supply. The registrant may then claim a deduction from net tax equal to the amount so credited, thereby relieving the sponsor or unregistered organizer of the need to file for a rebate.

Subsection 252.4(1) Rebate to Sponsor of Foreign Convention

This subsection provides for a rebate to a sponsor of a foreign convention of the tax paid by the sponsor in respect of a convention facility or related convention supplies that are acquired in Canada or imported for use at the convention. An application for this rebate must be filed within one year after the convention is held.

Subsection 252.4(2) Rebate Credited to Sponsor by Registered Convention Organizer

Where a registrant who is the organizer of a foreign convention supplies a convention facility or related convention supplies to the sponsor of the convention, the organizer may credit the sponsor for the amount of the rebate the sponsor would otherwise be entitled to claim under subsection 252.4(1) in respect of that supply. The registered organizer may then claim a deduction from net tax equal to the amount so credited to the sponsor.

Subsection 252.4(3) Rebate to Unregistered Organizer of Foreign Convention

This subsection provides that an unregistered organizer of a foreign convention may claim a rebate of the tax paid in respect of the convention facility or related convention supplies that are acquired in Canada or imported for use at the convention. An application for the rebate must be filed within one year after the convention is held. This measure is intended to ensure equitable treatment of foreign conventions that are organized by unregistered persons and foreign conventions organized by registrants.

Subsection 252.4(4) Rebate Credited by Registered Supplier of Convention Facility or Accommodation

Where a registrant makes a supply of a convention facility or short-term accommodation to the sponsor or unregistered organizer of a foreign convention in connection with the convention, the registrant may credit the sponsor or organizer, as the case may be, for the amount of the rebate they would otherwise be entitled to claim under subsections 252.4(1) or (3) in respect of that supply and claim a deduction from net tax equal to that amount.

Announcements regarding rebates in respect of conventions were included in the press releases of December 18, 1990 and May 15, 1991. The provisions under new subsection 252.4 are consistent with those announcements and are effective January 1, 1991.

Liability for Amounts Paid or Credited by Registered Person

ETA
252.5

New Section 252.5 provides that, where a registrant has paid or credited an amount to a person in respect of a non-resident rebate and the person was not entitled to the rebate or was paid or credited an amount in excess of the rebate, the registrant and the person are jointly and severally liable to pay to the Receiver General that amount or excess if the registrant knew, or ought to have known at the time the amount was paid or credited, that the person was not entitled to the rebate so paid or credited. If the registrant could not reasonably have been expected to have known that the person did not satisfy the eligibility criteria for the rebate or that the amount paid or credited was in excess of the rebate to which the person was entitled, the person, and not the registrant, is liable to pay to the Receiver General the amount of the rebate or that excess.

This measure is consequential to the streamlined system for claiming visitor rebates announced in the press release of December 18, 1990 and is effective January 1, 1991.

Clause 102

Employee and Partner Rebates

ETA
253

Section 253 provides a rebate to certain employees and members of partnerships for the tax on expenses that are deductible in computing the employee's income from employment, or the partner's income, for income tax purposes.

Subclause 102(1)

ETA
253(1) and (2)

The most important modification to subsection 253(1) is the introduction of a requirement for an employer certification in respect of allowances. Specifically, amended subsection 253(1) provides that an individual is not entitled to a rebate under this subsection in respect of expenses for which the individual has received an allowance unless the individual obtains a certification from the individual's employer that the employer did not consider the allowance to be reasonable at the time it was paid. This amendment is consequential to amendments to section 174, whereby employers are entitled to an input tax credit or rebate in respect of an allowance based on whether, at the time the allowance was paid, the employer considered the amount to be reasonable for income tax purposes. The amendment to subsection 253(1) will therefore ensure that a rebate will not be paid to an employee or partner, where the employer or partnership is entitled to an input tax credit or rebate in respect of the same expense.

This change was announced in the press release of September 14, 1992. Certifications in respect of allowances will be required for rebates claimed in respect of the 1992 and subsequent taxation years. The certification will appear on the rebate application form.

Subsection 253(1) is also amended to replace the existing reference therein to an "automobile" with a reference to a "motor vehicle". This change ensures consistency with paragraph 8(1)(j) of the *Income Tax Act*, which was recently amended to refer to a "motor vehicle" rather than an "automobile". This change was announced in the press release of March 27, 1991.

Further amendments to subsection 253(1) ensure that a rebate is available under this section in respect of the lease of a musical instrument, motor vehicle or aircraft. This change was announced in the press release of March 27, 1991.

The reference in existing subsection 253(1) to "consideration" deducted for income tax purposes is replaced with a reference to an "amount" deducted. This change ensures that the rebate is calculated by multiplying the tax fraction by the amount (including GST and provincial sales taxes) deducted for income tax purposes. This change was announced in the press release of March 27, 1991.

While existing subsection 253(1) provides a rebate in respect of an importation of a musical instrument, automobile or aircraft, a rebate is not provided in respect of importations of other properties. Amendment subsection 253(1) ensures that a rebate is available in respect of an importation of any property.

To the extent that a partnership is not entitled to claim a capital cost allowance-based input tax credit in respect of a musical instrument pursuant to subsection 202(4), subsection 253(2) clarifies how a rebate in respect of such a musical instrument is to be calculated for a partner of a registrant.

The amendment also clarifies that, for purposes of determining the input tax credit of a partnership, under subsection 253(2), in respect of a property or service acquired by a partner, the amount deductible under the *Income Tax Act* by the partner in respect of the property or service is not further prorated between the personal use and business use of the property. (To the extent that the amount deductible by the partner for income tax purposes reflects only the business-related use of the property, the proration between personal and business use has already occurred.) The correct prorating between use in commercial activities and other activities of the partnership is accomplished by determining what would have been the input tax credit of the partnership if it had acquired the property or service exclusively in activities of the partnership and for use in its commercial activities to the same extent that the partner's use of the property or service in the partnership activities was in commercial activities of the partnership.

These technical changes are effective January 1, 1991.

Subclause 102(2)

ETA
253(3)

Subsection 253(3) is amended to provide that an application for a rebate under section 253 is to be filed with the income tax return of the applicant and that the interest, penalty, assessment and appeals provisions of the *Income Tax Act* will govern the administration of the rebate. An individual may make only one application per year for a rebate under this section.

To the extent that individuals use information included in their income tax returns to determine their rebate under section 253 and apply for the rebate at the same time as they file their income tax returns, the administration of the rebate is streamlined by having Revenue Canada Taxation administer the rebate and by having the interest, penalty, assessment and appeals provisions of the *Income Tax Act* apply to the rebate.

This change was announced in the press release of September 14, 1992 and is effective January 1, 1991. However, rebates claimed in respect of the 1991 calendar year need not be filed with the applicant's income tax return.

Clause 103

New Housing Rebate

ETA
254

Section 254 provides for a partial rebate of the GST paid by an individual acquiring a newly constructed home.

Subparagraphs 254(2)(f)(i) and (ii) as well as (g)(i) and (ii) are amended to delete the phrase "under any arrangement for that purpose." This amendment coincides with changes to the definition "builder" in subsection 123(1) and confirms that the GST New Housing Rebate is not payable to a person who acquires a home after it has been occupied as a place of residence by an individual.

This amendment is effective January 1, 1991.

Clause 104

Rebate for Building Only

ETA
254.1

New section 254.1 provides for a partial rebate of tax paid in respect of a supply to which new subparagraph 191(1)(b)(ii) applies – i.e. the supply of a residential complex to an individual under an agreement to sell the house and lease the land under a 20-year lease or a lease with an option to purchase. This rebate differs from the New Housing Rebate provided under section 254 in that the rebate under this section is determined by reference to the consideration payable for the building only. The rebate is not payable with respect to the lease of the land.

Subsection 254.1(1) Definitions

Subsection 254.1(1) defines, for the purposes of section 254.1, the terms "long term lease", "relation", and "single unit residential complex". For this purpose, the term "single unit residential complex" is expanded to include duplexes. A long-term lease refers to a lease of land for a period of at least 20 years or a lease with an option to purchase the land.

Subsection 254.1(2) New Housing Rebate for Building

Subsection 254.1(2) provides authority for the payment of a rebate in the following circumstances:

- the rebate must relate to a supply of a single unit residential complex under which the recipient purchases the building but leases the land either for a long term (20 years) or with an option to purchase (254.1(1)(a));

- at the time the contract to purchase the house and lease the land is entered into, the intended use of the complex must be as a primary place of residence of the purchaser or an individual who is related to, or a former spouse of, the purchaser (254.1(1)(b));

- at the time of possession, the fair market value of the complex – i.e. the land and the building – must be less than $481,500 (254.1(1)(c));

- the builder must be deemed, under subsection 191(1), to have made a supply of the complex as a result of giving possession of the complex to the purchaser. In other words, the rebate is not available unless tax has been accounted for by the builder under the self-supply rule contained in subsection 191(1). An exception to this rule arises where possession of the complex is given to the purchaser between January 1, 1991 and March 27, 1991. In this case, the requirement that the builder self supplied does not apply since the amendment to paragraph 191(1)(b), which requires the builder to self supply on a lease of land/sale of a house, is effective March 28, 1991 (254.1(1)(d));

- the transfer of possession of the complex to the recipient must occur after the construction or substantial renovation of the complex (254.1(1)(e));

- the complex must not have been occupied as a place of residence by any individual following the completion of the substantial renovation or construction and before possession of the complex is given to the purchaser (254.1(1)(f));

- the individual who is purchasing the house, or a relative, must be the first to occupy the property as a place of residence after completion of the substantial renovation or construction of the complex or the individual who is purchasing the house must sell the house under exempt conditions before it has been occupied (254.1(1)(g));

- the amount of the rebate is determined by reference to the fair market value of the land and building and is based on the consideration payable for the building but not including any amount attributable to rent payable in respect of the land, or any amount payable in respect of an option to purchase the land. The rebate is calculated as,

  - where the fair market value of the land and building is not more than $374,500, the lesser of 2.34% of the consideration and $8,750, and

  - where the fair market value is more than $374,500, the rebate declines from the maximum of $8,750 to nil where the fair market value is $481,500 or greater (paragraphs 254.1(1)(h) and (i)).

Subsection 254.1(3) Application for Rebate

Subsection 254.1(3) allows the purchaser up to four years from the time the individual purchases the complex to claim the New Housing Rebate under this section.

Subsection 254.1(4) Application to Builder

The purchaser may assign the rebate to the builder in exchange for a credit against the tax payable to the builder on the purchase, or the purchaser may claim the rebate by filing an application with the Minister of National Revenue. Subsection 254.1(4) authorizes the builder to credit the amount of the rebate against the consideration payable by the purchaser in respect of the supply of the complex.

If, at the time the supply is made, the amount of the rebate is not credited or paid by the builder to the purchaser, the purchaser has four years to make an application to the builder for the rebate.

Subsection 254.1(5) Forwarding of Application by Builder

This subsection provides that, where the builder pays or credits the amount of a rebate to the purchaser, the application for the rebate should be forwarded by the builder to the Minister of National Revenue with the GST return of the builder for the period in which the rebate was paid or credited to the purchaser.

Subsection 254.1(6) Joint and Several Liability

Subsection (6) provides that where a builder pays or credits the rebate to the purchaser, and the builder knew or ought to have known that the purchaser was not entitled to any amount paid or credited as a rebate, the builder and the purchaser are jointly and severally liable to repay, to the Minister of National Revenue, the amount paid or credited in error as a rebate to the purchaser.

These amendments are pursuant to the press release of March 27, 1991 and are effective January 1, 1991.

Clause 105

Cooperative Housing Rebate

ETA
255

Section 255 provides a partial rebate, comparable to that under section 254, where an individual purchases a share in a co-operative housing corporation for the purpose of using a residential unit of the corporation as a primary place of residence of the individual or a relative of the individual.

Subclause 105(1)

ETA
255(2)(b) to (d) of French version

This technical amendment simply replaces the term "action" with the more precise expression "part de son capital social" to refer to the capital stock of a cooperative housing corporation. This correction applies as of January 1, 1991.

Subclauses 105(2) and (3)

ETA
255(2)(e) and (f)

Paragraph 255(2)(e) and subparagraphs 255(2)(f)(i) and (ii) are amended to delete the phrase "under any arrangement for that purpose." These amendments confirm that the rebate is not payable to a person who acquires a share in a co-operative housing corporation for the purpose of using a residential unit of the corporation after that unit has been occupied as a place of residence by another individual.

This amendment is effective January 1, 1991.

Subclause 105(4)

ETA
255(3) of French version

This technical amendment simply replaces term "action" with the more precise expression "part du Capital Social" to refer to the capital stock of a cooperative housing corporation. This correction applies as of January 1, 1991.

Clause 106

Rebate for Owner-Built Homes

ETA
256

Section 256 provides a partial rebate of the GST paid by an individual who builds or substantially renovates his or her own primary place of residence or engages another person for that purpose.

Subclause 106(1)

ETA
256(1)

The amendment to subsection 256(1) extends the definition of "single unit residential complex," to include a duplex. This is consistent with the New Housing Rebate provided under section 254.

This amendment is effective January 1, 1991.

Subclause 106(2)

ETA
256(2)(d) to (h)

Paragraph 256(d) is amended to delete the phrase "under any arrangement for that purpose." As in sections 254 and 255, this amendment ensures that the rebate is not payable to a person who acquires the property after it has been occupied by another individual as a place of residence.

Existing paragraphs (2)(e) to (h) are repealed and replaced with new paragraphs (2)(e) and (f). As a result of these amendments, a rebate of 36% of the tax paid is available where the fair market value of the land and building is $350,000 or less. The rebate is phased out for properties valued between $350,000 and $450,000. The substantive change introduced by this amendment is that the 36% rebate is payable whether or not GST was paid on the land on which the house is built. Under the existing provision, a rebate of only 10% of the tax is payable in situations where GST was not paid on the land.

This amendment is pursuant to the November 5, 1991 press release and is effective January 1, 1991. Pursuant to subclause 106(5), where an individual has already claimed the 10% rebate under the existing section 256, the individual may file a second application for the remaining 16% of tax paid, notwithstanding the provisions of section 262, which prevent a person from making more than one application for a rebate.

Subclause 106(3)

ETA
256(2.1)

New subsection 256(2.1) deems an individual who purchases a new and unoccupied mobile home to have constructed the home. As a result, the individual can claim the New Housing Rebate under section 256 for owner-built homes. In order for this subsection to apply:

- the purchaser must not have claimed a New Housing Rebate in respect of the home under section 254 or 254.1,
- the purchaser must have acquired the home for use as a primary residence for themselves, a related individual or an ex-spouse, and
- the purchaser must be the first person to occupy the home or must make an exempt sale of the home before it has been occupied.

An individual purchasing a new mobile home has a choice of claiming the rebate through the mobile home dealer or claiming it directly from the Minister of National Revenue. However, in order to claim a rebate for any tax paid on the purchase of land for the mobile home or for improvements to the land, the individual would have to file a rebate claim with the Minister under section 256.

This amendment is effective January 1, 1991.

Clause 107

Rebate to Owner of Land Leased for Residential Purposes

ETA
256.1

New section 256.1 provides to a lessor of land, a rebate of tax paid by the lessor in respect of the purchase of the land or in respect of improvements to the land. In order to be eligible for the rebate, the land must be leased under exempt conditions to a lessee or a sublessee who will be required to self-supply the land under section 190 or 191.

Specifically, new section 256.1 deals with the case where a person leases land to a lessee and the lease is exempt under paragraph 6.1(a) of Part I of Schedule V because the lessee is acquiring the land for the purpose of:

- making supplies of residential rental accommodation that are exempt under paragraph 6(a) of Part I of Schedule V, or
- making an exempt supply by way of lease of the land to another person under subparagraph 7(a)(i) of Part I of Schedule V – i.e., where a residential complex is situated on the leased land or the other person intends to situate a residential complex or unit on the land.

Because the lease of the land is exempt in these circumstances, the owner and any other lessor of the land are generally not entitled to claim input tax credits in respect of the acquisition of the land or improvements to the land. However, a lessee of the land will, in almost all cases, be required at some point to self-supply the land under section 190 or 191. Because the supply to the lessee is exempt, the lessee is not able to recover, under section 193 or 257, the tax content embedded in the land at the time the lessee is required to self-supply. Accordingly, new section 256.1 provides a rebate in these circumstances to the owner and any other lessor who leases the land for the purposes of a subsequent exempt supply described in paragraph 6(a) or subparagraph 7(a)(i) in circumstances in which a person will be required to self-supply the land.

The amount of the rebate is equal to the tax paid by the lessor in respect of the last acquisition of the land and the tax paid on improvements to the land since that last acquisition, less input tax credits and rebates claimable by that person in respect of the land and improvements. While a lessor who is subleasing the land would not have paid tax on the acquisition of the land, tax may have been paid on improvements to the land. That tax is recoverable under section 256.1.

In order to claim a rebate under section 256.1, an application must be filed with the Minister of National Revenue within four years from the time the lessee self-supplies under section 190 or 191.

This amendment is pursuant to the March 27, 1991 press release and is effective January 1, 1991.

Clause 108

Non-registrant Sale of Real Property

ETA
257(1)

Section 257 provides a rebate of uncredited tax where a non-registrant makes a taxable supply of real property, – e.g., the sale of real property by an unregistered doctor who used the property exclusively in making exempt supplies of medical services. Tax would have been payable at the time of the acquisition of the property, but no input tax credit could have been claimed because the property was not acquired for use in a commercial activity. On the resale, however, the seller would be required to charge tax. To prevent double taxation in this circumstance, section 257 permits the non-registrant seller to claim, at the time of sale, a rebate.

The amendments to subsection 257(1) are largely technical in nature and are for clarification purposes. A substantive change is with respect to the manner in which rebates under section 259 are taken into account in determining the amount of the rebate under this section. The change in this regard parallels the change made to the credit at time of sale of real property for registrants under section 193 (see commentary to subclause 53(2)). Another substantive change is the addition of a reference to tax that would have been payable where section 167 applies to the sale of the property (i.e., where no tax applies to the sale because it occurs under a tax-free roll-over pursuant to section 167).

Paragraph (a) of element "A" of the formula in subsection 257(1) is amended to clarify that the referenced acquisition is the last acquisition of the property by the person. Element "A" is also amended to refer to the tax that would have been payable in situations where section 167 applies to the sale of the real property.

This amendment is effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 109

Rebates for Charities, Non-Profit Organizations and Selected Public Service Bodies

ETA
259

Under this section, registered charities, as well as non-profit organizations that are substantially funded by governments, are eligible for a rebate of 50% of the non-creditable GST paid on their purchases relating to their non-commercial activities. In addition, municipalities, school authorities, hospital authorities, universities and publicly-funded colleges are entitled to partial rebates of GST.

The amendments to section 259 clarify the application of the rebate provisions by more clearly defining some of the terms used in the section. This section continues to authorize payment of rebates to selected public service bodies under the same conditions currently set out in existing section 259.

Subsection 259(1) defines key terms used throughout the section. Some of these definitions have been clarified as follows:

Under subsection 259(1), "charity" is currently defined, for the purposes of the section, to include a "health care facility" that provides a nursing home intermediate care service or a residential care service, within the meaning of the *Canada Health Act*. Since the definition of these services has not yet been provided for in that Act, section 1 of Part II of Schedule V of the *Excise Tax Act* is being amended to define these types of "health care facilities" for GST purposes. Specifically, non-profit facilities described in amended paragraph (c) of the definition "health care facility" in Part II of Schedule V are eligible for the rebate.

The definition "municipality" in subsection 259(1) is amended to clarify that where an organization is designated pursuant to section 259, the designation will specify the "activities", rather than the "services", in respect of which it is so designated. This clarification in wording is consequential to the addition of a reference to "designated activities" in new subsection 259(4).

The definition "non-creditable tax charged" replaces existing subsection 259(2) which defines the expression "tax payable" for purposes of section 259. The new definition is added to clarify what is included in the amount eligible for a rebate. The approach remains the same – an eligible claimant is entitled to a rebate of tax for which no input tax credit may be claimed. The new definition recognizes that, under section 169, input tax credits in respect of property and services are determined "for a reporting period" and the amount for such a period is the total of all tax that became payable or was paid in that period. Accordingly, the "non-creditable tax charged" in respect of a property or service is determined, "for a claim period", as the total of all tax that became payable on the property or service during the period less the total of all input tax credits of the claimant for that tax.

The new definition also clarifies the treatment of amounts that are deemed, under various provisions of Part IX, to have been paid as tax. In most cases, it is inappropriate to include these amounts in the rebate calculation as they do not represent actual outlays for which a rebate would not have already been made available. The general exclusion of amounts deemed to have been paid is consistent with current administrative practice. However, there are two exceptions where an amount of tax deemed to have been paid does represent a real expense to the rebate claimant. Specifically, the new definition includes tax calculated on an allowance (e.g., an employee allowance) paid by the rebate claimant and to which subsection 174 applies. Similarly, the new definition includes tax deemed under section 175 to have been paid in respect of a reimbursement paid by the claimant to an employee (e.g., a reimbursement paid to an employee for expenses relating to business travel). As a result of these inclusions in the new definition "non-creditable tax charged", the claimant is entitled to a partial rebate of the portion of the tax deemed to have been paid under sections 174 and 175 that is not recoverable as an input tax credit. This change is effective January 1, 1991.

The remaining provisions of section 259 are renumbered due to the repeal of existing subsection 259(2), as explained above, and the repeal of existing subsections 259(7) to (11). The latter subsections provide for an election to use a simplified method of calculating the rebate under section 259 to registered claimants. However, this simplified method was, instead, provided for in regulations made pursuant to section 227 and subsections 259(7) to (11) are therefore unnecessary.

The following is a table of concordance between the existing provisions and the amended provisions.

EXISTING PROVISION	FUNCTION	AMENDED PROVISION
259(2)	Definition of amount partially rebatable	Definition "non-creditable tax charged"
259(3)	Definition of qualifying NPO	259(2)
259(4)	Authority to pay rebates	259(3)
–	Rebates to municipalities designated under s.259	259(4)
259(5)	Application for rebate - timing	259(5)
259(6)	Application - one per claim period	259(6)
259(7)	Simplified computation authority	227
259(8)	Simplified computation - no ITC	227
259(9)	Simplified computation - election form	227
259(10)	Simplified computation - revocation	227
259(11)	Simplified computation - deemed revocation	227
259(12)	Selected public service body - use	259(7)
259(13)	Selected public service body - use	259(8)
259(14)	Prescribed percentage	259(9)
259(15)	Branch filing for registrants	259(10)
259(16)	Branch filing for non-registrants	259(11)

The only other clarification that is made in section 259 (other than minor clarifications in wording) is in subsection 259(4), relating to the rebate for designated municipalities.

259(4) Rebate for Designated Municipalities

The provision dealing with rebates to organizations designated, for the purposes of section 259, to be municipalities in respect of certain municipal functions is broken out into a separate subsection – new subsection 259(4) – in order to clarify that this rebate is determined with reference to the specific designated activities of the organizations, as opposed to all their non-commercial activities as is the case for other rebate claimants. Subsection 259(4) provides that such organizations are entitled to the rebate only to the extent that they use property or services in the activities for which they have been designated. For instance, if a housing authority is designated under section 259 in relation to its provision of subsidized housing, it is entitled to a rebate only for property and services used in supplying the housing. It is not entitled to a rebate with respect to activities for which it is not designated.

With respect to tax on lease payments for successive billing periods (referred to as "lease intervals"), the designated organization is entitled to a rebate of 57.14% of the non-creditable tax, prorated by the extent to which the organization intended, at the beginning of each billing period, to use the property in the course of activities for which it was designated.

Similarly, taxes applicable to on-going services for which periodic payments are made are eligible for a rebate calculated as 57.14% of the non-creditable tax, prorated by the extent to which the organization consumed, used or supplied the services, or intended to consume, use or supply them, in the course of its designated activities.

For any other supply (for example, purchase of capital property or improvements thereto), the designated organization is entitled to a rebate of 57.14% of the non-creditable tax thereon, prorated by the extent to which the municipality intended, at the time the service or property is acquired or imported, to consume, use or supply it in the course of the designated activities.

This subsection is consistent with the existing administration of this section and is effective January 1, 1991.

Clause 110

Rebate of Payment Made in Error

Subclause 110(1)

Incorrect Determination of Value

ETA
261(2)(c)

Under section 261, where a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount within four years from the day the amount was paid or remitted. However, by virtue of paragraph 261(2)(c), a rebate under this section is not available if the amount was paid in error as a result of an incorrect determination of the value of imported goods for purposes of Division III. In that circumstance, other rebate or refund provisions apply. Paragraph 261(2)(c) is amended to specifically refer to those other provisions, namely new subsection 215.1(1) and (2), and the provisions of the *Customs Act* that apply because of new subsections 215.1(3) and 216(7).

This amendment applies to amounts paid as tax under Division III on goods that are released (within the meaning assigned by subsection 2(1) of the *Customs Act*) after the day this amendment receives Royal Assent.

Subclause 110(2)

Application by Branches and Divisions

ETA
261(4) to (6)

Existing section 261 provides that a person can make only one application for a rebate under that section in any month. This requirement may not always be practical for persons operating through branches or divisions.

New subsection 261(5) provides that where a person is engaged in one or more activities in separate branches or divisions, and is authorized to file separate returns in relation to a branch or division pursuant to subsection 239(2), the person is also authorized to file separate rebate applications under section 261 in respect of the branch or division.

New subsection 261(6) provides that where a person is divided into branches or divisions but is not authorized to file separate returns under section 239, the person can apply to the Minister of National Revenue under that subsection for authorization to file separate applications for rebates in respect of particular branches or divisions.

In either case, each branch or division is limited to one application per month.

Consistent with administrative practices, this amendment is effective as of January 1, 1991.

Clause 111

Application for Rebate

ETA
262

Section 262 sets out the application requirements in respect of rebates under Division VI.

Subclause 111(1)

ETA
262(1)

Subsection 262(1) is amended to exclude from its application rebates under section 253 (i.e., rebates for employee and partner expenses). This change is consequential to the addition of subsection 253(3), which provides that individuals that are employees or partners of registrants and who are applying for a rebate under section 253 are to file their application with their income tax return.

This change is consistent with administrative practice and is effective January 1, 1991.

Subclause 111(2)

ETA
262(3)

Subsection 262(3) sets out particular application requirements for a new housing rebate where more than one individual pays consideration or tax in respect of property to which a rebate under any of sections 254 to 256 is payable.

The amended subsection clarifies that, consistent with administrative practice, this subsection applies to the supply of a duplex. Subsection 262(3) is also amended to refer to the rebate provided under new subsection 254.1, (i.e., a rebate for a home situated on leased land).

These amendments apply as of January 1, 1991.

Clause 112

Restrictions on Division VI Rebates

ETA
263

This section provides that a person is not entitled to a rebate under Division VI of an amount of tax to the extent that the amount has otherwise been refunded, remitted or credited to the person or to the extent that the person was otherwise entitled to an input tax credit in respect of the tax. The section is amended to include references to rebates payable under new subsections 215.1(1) and (2) and the provisions of the *Customs Act* that apply because of new subsection 215.1(3) and 216(7).

The amendment is applicable to amounts paid as tax under Division III on goods released after the day on which Royal Assent is given to the amendment.

Clause 113

Bankruptcy and Restriction on Rebates

ETA
263.1

New section 263.1 provides that rebates that a person becomes entitled to claim prior to becoming a bankrupt will not be paid after the person becomes bankrupt unless all returns for reporting periods that ended before the appointment of the trustee in bankruptcy have been filed and all outstanding amounts in respect of those reporting periods have been paid or remitted.

This amendment is effective as of THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 114

Overpayment of Rebate

ETA
264

This section provides that where there has been an overpayment of a rebate under Division VI, the recipient shall repay the excess amount. Subsection 264(1) is amended to include references to rebates payable under subsection 216(6), amounts rebatable under Division III - section 215.1, and to exclude rebates paid under section 253. The exclusion for rebates under section 253 is consequential to the addition of new subsection 253(5) which provides that parallel provisions of the *Income Tax Act* apply to those rebates.

This amendment is effective as of January 1, 1991 except that the reference to "subsection 216(6)" does not apply until the amendment receives Royal Assent.

Clause 115

Bankruptcy Rules

ETA
265

Existing section 265 provides for the joint and several liability of a trustee in bankruptcy and the bankrupt. The liability is limited to the property of the bankrupt which is in possession of the trustee and available to satisfy the tax liability at the time of appointment of the trustee.

As announced in the March 27, 1991 press release, amended section 265 clarifies that the trustee's liability is limited to the total value of the property and money of the bankrupt in the trustee's possession or control. This amendment is effective as of January 1, 1991.

Section 265 is further amended, with application to amounts that become payable or remittable by a bankrupt after ANNOUNCEMENT DATE, to provide that the trustee in bankruptcy is jointly and severally liable with the bankrupt for the payment or remittance of all amounts that become payable or remittable by the bankrupt before bankruptcy and all amounts that become payable or remittable by the bankrupt after bankruptcy other than amounts that relate solely to activities to which the bankruptcy does not apply.

Clause 116

Receivership Rules

ETA
266

Existing section 266 provides that a receiver is jointly and severally liable with the person in receivership for tax payable by the person as of the time of appointment of the receiver. The liability is limited to the property of the person which is in possession of, or under the control or management of, the receiver.

As announced in the March 27, 1991 press release, amended section 266 provides that the receiver's liability is limited to the total value of the property and money in the possession or under the control of the receiver. This amendment is effective as of January 1, 1991.

Amended section 266 also provides that the receiver is jointly and severally liable with the person in receivership for the payment or remittance of all amounts, as opposed to just tax, that became payable or remittable under Part IX by the person in receivership before the receiver was appointed and all amounts that become payable or remittable under Part IX by the person after appointment of the receiver, other than amounts that relate to activities to which the appointment does not relate. This amendment applies to amount that become payable or remittable under Part IX after ANNOUNCEMENT DATE.

Clause 117

Joint Venture Election

ETA
273

Section 273 permits an operator and a participant in a qualifying joint venture to elect jointly to designate the operator as the person responsible for accounting for GST on behalf of both parties with respect to their purchases and sales made in the course of the activities of the joint venture.

The amendments to section 273 streamline the operation of the joint venture election. The most significant changes are the removal of the requirement to file the election, the extension of non-taxable treatment to supplies of property made by the operator to co-venturers with a new restriction that such supplies must be for use in the course of commercial activities of the joint venture, and the addition of authority for the Minister of National Revenue to "designate" qualifying activities which eliminates the need for regulations to prescribe such activities.

Subsection 273(1) Joint Venture Election

The preamble to subsection 273(1) is amended to provide more flexibility with respect to the documentation requirements evidencing the existence of a joint venture agreement. There also will no longer be a requirement to file the election with the Minister of National Revenue; it is sufficient that the election be evidenced in writing, in a manner satisfactory to the Minister, and retained by the operator for audit purposes. These amendments are pursuant to the press release of March 10, 1992.

The amendment to paragraph 273(1)(a) adds a reference to the period during which the election is in effect, consequential to the introduction of a revocation provision in new subsection 273(3).

Paragraph 273(1)(c) deems supplies of services made by the operator of a joint venture to a co-venturer not to be supplies, provided the supplies are made in the course of activities for which the joint venture was entered into. The amendment to paragraph 273(1)(c) extends this deeming provision to include supplies of property as well as services, effective January 1, 1991.

A further amendment to paragraph 273(1)(c) ensures that supplies of property or services made by the operator of a joint venture to a co-venturer are considered not to be supplies only where the property or services are for consumption, use or supply in the course of a commercial activity for which the joint venture agreement was entered into. Therefore, if, for example, a joint venture involves the exempt supply of a residential complex and the operator supplies property management services to the other co-venturers, those services will be treated as taxable supplies by the operator in the ordinary manner. This amendment applies to supplies by operators made after September 14, 1992.

Subsection 273(2) Assignee of Interest in Joint Venture

Like the amendment to paragraph 273(1)(a), this amendment to subsection 273(2) is consequential to the introduction of a right to revoke an election under section 273. Amended subsection 273(2) thus refers to the period during which the election is in effect. Amended subsection 273(2) also clarifies that a person who acquires an interest in a joint venture for which an election is in effect is deemed to have made the election at the time the person acquires the interest.

Subsection 273(3) Revocation

Subsection 273(3) provides that an election under section 273 can be revoked if the operator and co-venturer jointly file a notice of revocation.

This amendment is pursuant to the press release of March 10, 1992.

Subsection 273(4) Form of Election or Revocation

Subsection 273(4) requires an election or revocation to be made in a form, and containing information, prescribed (i.e., authorized) by the Minister of National Revenue. The election or revocation must also specify the effective date of the election or revocation.

Subsection 273(5) Joint and Several Liability

New subsection 273(5) adopts the rules which are currently set out in existing paragraph 273(1)(d). New subsection 273(5) provides that a registrant and another party to an agreement who elect (or purport to elect) jointly under section 273 are jointly and severally liable for all GST obligations assumed by the registrant on behalf of the other person with respect to the agreement. This joint liability exists where two or more persons have purported to make the election under section 273 even if the election is subsequently determined to be invalid because, for example, the arrangement between the two parties is found not to be a bona fide joint venture.

Subsection 273(6) Joint Venture Beginning Before 1991

Subsection 273(6) sets out the rules in existing subsection 273(3) which deal with joint ventures in existence on January 1, 1991. These rules currently deem the operator of a joint venture to have filed an election jointly with the co-venturer if the operator, in a return for the first reporting period of 1991, accounted for the purchases and sales made on behalf of the co-venturer in the course of the joint venture.

Subsection 273(6) clarifies that the election applies only to supplies of property or services for consumption, use of supply in the course of activities for which the joint venture agreement was entered into. The subsection also deems the election to have been made rather than filed, as subsection 273(1) is amended to remove the requirement to file the election with the Minister of National Revenue.

Subsection 273(7) Application of Subsection 273(6)

Subsection 273(7) sets out the rules in existing subsection 273(4). These rules provide that the deemed election under subsection 273(6) applies only if a notice was sent by the operator to the co-venturer prior to January 1, 1991, stating that the operator intends to account for the GST in relation to the joint venture activities on behalf of the co-venturer and the co-venturer does not object. Subsection 273(7) clarifies that the election applies only to supplies of property or service for consumption, use or supply in the course of activities for which the joint venture agreement was entered into.

Except for the amendment to paragraph 273(1)(c) as described above, the amendments to subsections 273(2) to 273(7) are effective January 1, 1991.

Clause 118

Penalty and Interest

ETA
280(4)

Section 280 imposes penalty and interest where a person has failed to remit an amount of tax or instalments on account of tax when required to do so.

The amendment to subsection 280(4) makes some technical clarifications to the rules regarding the application of penalty and interest to overdue instalments. The amendment also clarifies that where penalty or interest is compounded on a particular day on an amount that a person failed to pay or remit, that penalty or interest is required to be paid to the Receiver General at the end of the particular day. If that amount of penalty or interest is not paid by the end of the next day, it is added to the amount on which penalty and interest applies on the particular day.

The amendment is consistent with administrative practice and is effective January 1, 1991.

Clause 119

Waiving Interest and Penalties

ETA
281.1

The amendment adds new section 281.1 which provides that the Minister of National Revenue may, in prescribed circumstances, waive interest or penalty payable by a person under Part IX.

The circumstances to be prescribed include those in which a person has been prevented from complying with the filing of a return or payment of an amount of net tax or an instalment due to extraordinary circumstances beyond the person's control. Such circumstances would include, for example, a natural disaster, the death or serious illness of a key employee, as well as situations where Revenue Canada has provided erroneous information to taxpayers in publications. Relief will not be provided where a delay in compliance arises out of neglect or lack of awareness on the part of the person.

The circumstances for which the Minister will have the authority to waive penalty or interest will also include those in which a person has not remitted an amount of tax by virtue of not having correctly charged and collected the tax on a taxable supply made to a registrant who would have been entitled to an input tax credit if the tax were correctly applied (hereafter referred to as a "wash transaction"). In this circumstance, the Minister will have the authority to waive interest or penalty payable subject to a minimum penalty of the lesser of the total interest and penalty owing and 4% of the tax not remitted. This measure will allow the Minister to show discretion in dealing with taxpayers in situations where errors in applying the tax did not result in any net revenue loss to the government and where the normal application of penalty and interest would otherwise result in a person owing a significant amount of penalty and interest. This would typically be the case where an error made by a registrant, in not charging or collecting tax on a supply which is taxable at 7%, is not discovered until several reporting periods after the error is made. The imposition of a minimum penalty is intended to ensure that the integrity of the multi-stage nature of the GST system is maintained.

The following additional circumstances will be prescribed as necessary in order for a waiver of penalty or interest under this section:

- Persons requesting such a waiver will be required to have made every reasonable effort to comply with the requirements of the legislation and to minimize any delay encountered in complying or remitting any amounts due. They will also be expected to have remedied any delays or corrected errors within a reasonable amount of time.

- Persons will be required to make a written request to the Minister for the waiver, explaining the particular circumstances giving rise to the request. Where a waiver of penalty or interest is requested in respect of a wash transaction, the person will also be required to provide evidence that the supply in question was made to a registered person who would have been entitled to an input tax credit if the tax were correctly applied.

The waiver of penalty or interest in extraordinary circumstances was announced in the press release of April 27, 1992, and the waiver in circumstances involving wash transactions was announced in the press release of September 14, 1992. The amendment is effective January 1, 1991.

Clause 120

Communication of Information

ETA
295

Section 295 prohibits the use or communication of information obtained under Part IX of the Act unless specifically authorized by one of the exceptions found in the section.

The amendments to section 295:

- adopt a new definition of "personal information" for the purpose of describing the kind of information that is subject to the rules against unauthorized use or disclosure; personal information does not include information that does not reveal the identity of the person to whom it relates;

- broaden the definition "official" in subsection 295(1) to include persons engaged, or formerly engaged, by or on behalf of Her Majesty, and amend the definition "authorized person" in that subsection to exclude persons employed or engaged by Her Majesty in right of a province;

- adopt terminology that is more consistent with the offence provision in section 328; in particular, the new wording refers to providing information rather than communicating information;

- amend paragraph 295(4)(*a*) to allow the use of personal information in criminal proceedings that have been commenced by the preferring of an indictment;

- amend paragraph 295(3)(*b*) to allow the use of personal information in legal proceedings relating to the administration or enforcement of the *Canada Pension Plan*, the *Unemployment Insurance Act* or any federal or provincial law providing for the imposition or collection of a tax or duty;

- add new subsection 295(4.1), which allows the Minister of National Revenue to disclose personal information to alert appropriate persons of situations involving imminent danger of death or physical injury to any individual;

- clarify in paragraph 295(5)(*a*) that personal information may be provided to any person for the purposes of administering or enforcing the Act;

- amend subparagraph 295(5)(*c*)(i) of the Act to conform with the wording of the corresponding provision in the *Customs Act*, thereby allowing the Minister of National Revenue to authorize the disclosure of personal information;

- amend subparagraph 295(5)(*c*)(ii) of the Act to clarify that the rule allowing disclosure of personal information to any person legally entitled to it applies only where that entitlement is under an Act of Parliament;

- allow personal information to be provided to any official - federal or provincial - for the purposes of the administration or enforcement of the *Canada Pension Plan*, the *Unemployment Insurance Act* or a federal or provincial law providing for the implementation or collection of a tax or duty, or for preparing to administer a fiscal policy;

- clarify that personal information may be disclosed to provincial governments for the purpose of the formulation or evaluation of fiscal policy;

- allow personal information as to the size of a person to be communicated to an official for the purposes of statistical research and analysis;

- allow the disclosure of personal information to an official for the purposes of setting off debts as authorized under section 55 of the Financial Administration or section 7.1 of the *Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act*;

- allow the disclosure of personal information for the purposes of the remission and debt write-off provisions of sections 23 to 25 of the *Financial Administration Act*;

- provide that personal information may be used to compile statistical information or other information that does not reveal the identity of the persons to whom it relates;

- add new paragraph 295(5)(*g*) and new subsection 295(5.1) and revise the definition "authorized person" in subsection 295(1); these amendments relate to the disclosure of personal information for the purposes of the supervision and discipline of employees of Revenue Canada, Customs and Excise;

- allow personal information (such as an address) relating to a person to be used for the purpose of providing that person with information;

- allow personal information to be provided for the purposes of the *National Archives of Canada Act*; and

- provide, in amended subsection 295(6), that personal information may be disclosed to anyone with the consent of the person to whom it relates.

The amendments to section 295 are applicable on Royal Assent.

Clause 121

Allowance of Rebate

ETA
296(4), (4.1) and (5)

Where a person pays an amount as or on account of tax that exceeds the amount of tax that is payable by the person, the person is entitled to a rebate under section 261 for the excess amount. To the extent that the person claimed the amount as an input tax credit, subsection 296(4) is intended to permit the amount to which the person would be entitled as a rebate to be applied against the additional amount of net tax that results from disallowing the input tax credit. In effect, the result is the same as if the amount were properly claimable as an input tax credit.

As currently worded, subsection 296(4) addresses only the situation where tax is payable but an excess amount has been paid and hence an excess input tax credit is claimed. It does not address the situation where a person paid an amount as or account of tax in respect of a non-taxable supply – e.g., where tax was charged on an exempt supply.

The provisions for the application of a rebate in circumstances described in existing subparagraphs 296(4)(a)(i) and (ii) are set out separately in new subsections 296(4) and (4.1).
Subsection 296(4.1) provides the Minister with the authority to apply any amount incorrectly claimed as an input tax credit, but otherwise refundable to a registrant, against any additional net tax owing as a result of disallowing the amount as an input tax credit. This change is intended to simplify the administration of the tax by avoiding the need for registrants to file rebate claims in these circumstances.

The amendment also introduces some timing changes to subsection 296(4). The existing provision provides that the rebate is applied against tax or net tax payable or remittable as of the day the return accounting for the tax or net tax is filed. This will generally provide the correct result; however, where a return is filed late, interest and penalty would still apply on the excess input tax credit for the period from the day the return was required to be filed to the day it was filed. The amended provisions ensure that the rebate is applied against tax or net tax as of the day the return is required to be filed.

The amendment to subsection 296(5) adds a reference to new subsection 296(4.1), consequential to the addition of the latter subsection. It also corrects an erroneous reference to "tax of a person" by substituting a reference to "tax payable by a person".

These changes are effective THE DAY IMMEDIATELY FOLLOWING ANNOUNCEMENT DATE.

Clause 122

Interest on Rebate

ETA
297(4)

Subsection 297(4) provides the Minister of National Revenue with the authority to pay interest to a person on a rebate under Division VI that is not paid to the person before a specified time.

The amendment clarifies that subsection 297(4) does not apply to rebates under section 253 to individuals who are employees or partners of registrants. This change is consequential to the addition of subsection 253(5) to the Act, which provides that the interest and administrative provisions of the *Income Tax Act* apply to rebates under section 253 since these are claimed in respect of taxation years and are filed with income tax returns.

The amendment is effective January 1, 1991.

Clause 123

Copy of Decision

ETA
309(2)

Subsection 309(2) provides that a copy of the judgment of the Tax Court of Canada on an appeal, and any written reasons given therefor, is sent by registered mail to the appellant and the Minister of National Revenue. This provision is, upon Royal Assent, repealed since those requirements are now found in subsection 18.22(3) of the *Tax Court of Canada Act*. (See commentary on that provision and subsection 171(4) of the *Income Tax Act*.)

Clause 124

Anti-Avoidance - Non-arm's Length Transfers

Subclause 124(1)

ETA
325(1)

Subsection 325(1) provides an anti-avoidance rule for non-arm's length transfers of property to persons. The substantive amendment to subsection 325(1) is in the formula under paragraph (d) for determining the amount to which the transferee and transferor are jointly liable. The amendment ensures that only the net amount assessed the transferee under subsection 160(2) of the *Income Tax Act* in excess of amounts paid by the transferor, is deducted in determining the liability under section 325.

Subclause 124(2)

ETA
325(4) and (5)

Subsection 325(4) ensures that the anti-avoidance rule in subsection 325(1) does not apply in certain circumstances. The section is amended to ensure that the terminology used is consistent with amended subsection 325(1).

This amendment is effective as of January 1, 1991.

New subsection 325(5) provides that, for the purposes of section 325, "property" includes money. As a result, subsection 325(1) will now impose a joint and several liability for outstanding amounts payable or remittable upon the non-arm's length transfer of property or money. Under the existing provision, the joint and several liability is imposed only upon the non-arm's length transfer of property. In addition, the extent of any joint and several liability imposed under subsection 325(1) will be based on the amount of money and the value of property transferred to the transferee.

This amendment was announced in the March 27, 1991 press release and is effective January 1, 1991.

Clause 125

Offence re: Confidential Information

ETA
328

Existing section 328 provides that the unauthorized use or communication of tax information by any person constitutes an offence punishable on summary conviction by a fine of up to $5,000 and imprisonment for up to 12 months. That subsection is replaced by new subsections 238(1) and (2), each of which establishes an offence, and new subsection 238(3), which defines terms used in subsections 238(1) and (2).

Subsection 295(2) of the Act prohibits disclosure of information obtained for the purposes of the Act where the disclosure is made knowingly by an official or authorized person, except as authorized by section 295. Subsection 295(5) allows information to be provided to certain persons for specific purposes. Existing section 238 makes it an offence for any person to contravene subsection 295(2) or to use or communicate information provided to that person under subsection 295(5) for any purpose other than the purpose for which it was provided.

The amendments place the offence for contravening subsection 295(2) in new subsection 238(1) and place the offence relating to subsection 295(5) in new subsection 238(2). The penalty is the same for both subsections but, in the case of information provided under paragraph 295(5)(*a*), (*d*), (*e*) or (*h*), the offence created by paragraph 238(2)(*b*) applies only to officials to whom the information is provided. In the case of information provided under paragraph 295(5)(*b*), (*c*) or (*g*), the offence created by paragraph 238(2)(*a*) applies to any person to whom the information is provided under that paragraph of subsection 295(5).

The contravention of an order made under new subsection 295(5.1) is made an offence under new paragraph 238(1)(*b*). New subsection 295(5.1) allows the person presiding at a legal proceeding relating to the supervision, evaluation or discipline of a Revenue Canada, Customs and Excise employee to order such measures as the person may consider necessary to ensure that personal information disclosed in the course of that proceeding is not used or provided to any person for any purpose not relating to that proceeding. New paragraph 238(2)(*a*) also makes it an offence for any person to whom information has been provided under new paragraph 295(5)(*g*) in relation to the supervision or discipline of a Revenue Canada, Customs and Excise employee to misuse or make an unauthorized disclosure of that information.

New subsection 238(3) provides that for the purposes of subsections 238(1) and (2), "official" and "personal information" have the meanings assigned by subsection 295(1).

The amendments to section 238 are applicable on Royal Assent.

Clause 126

Transitional Rules - Real Property

ETA
336(2), (3) and (4)

Section 336 sets out a number of special rules pertaining to supplies of real property that straddle the start-up of the GST. The section provides that GST is not payable in respect of the purchase of a single unit residential complex, a residential condominium unit or a condominium complex (all as defined in subsection 123(1)) made under a written agreement entered into before October 14, 1989. In these cases, however, the builder (also defined in subsection 123(1)) is required to remit a special tax equal to 4% of the selling price of the property. The section also provides that if the purchaser of the property is also a "builder" of the complex only because of paragraph (d) of the definition "builder" in subsection 123(1), – i.e., the purchaser acquires the property for the purpose of reselling it before it has been occupied as a place of residence – the purchaser is deemed not to be a builder of the complex. This ensures that the sale by the purchaser is not subject to tax and thereby avoids double taxation as tax of 4% will have been paid by the original builder.

Subsections 336(2), (3) and (4) are amended to ensure that any subsequent supply of the property by a person who purchases the property from the original purchaser in circumstances where the original purchaser is reselling the property prior to it being occupied as a place of residence, will not be taxed. This is accomplished by deeming the property to have been occupied as a place of residence. This ensures that double taxation does not occur where the property passes through a chain of resellers prior to its final sale to a consumer.

This amendment is pursuant to the press release of June 24, 1991 and is effective January 1, 1991.

Subsections 336(2), (3) and (4) are also amended to allow the purchaser of the property to claim an input tax credit for the 4% tax paid by the original builder of the property in cases where the purchaser falls within the definition of "builder" by reason other than paragraph (d) of the definition. In these cases, the purchaser, as a builder, will be required to collect GST on an actual sale of the property or on a deemed sale under section 191. To ensure that double taxation does not occur, the purchaser in these circumstances is deemed to have paid tax of 4% of the purchase price charged by the original builder, thereby entitling the purchaser to an input tax credit under section 169.

These amendments are effective January 1, 1991.

A technical amendment to the wording of paragraph 336(4)(a) is also made to clarify that the sale of the condominium complex referred to in the subsection is a taxable sale. This amendment is pursuant to the press release of March 27, 1991 and is effective January 1, 1991.

Clause 127

Other Transactions Straddling the Start-up of the GST

ETA
337

Section 337 sets out a number of rules relating to transactions that straddle the start-up of the GST.

Subclause 127(1)

Agreements Entered Into in Writing Before 1991

ETA
337(1)

Subsection 337(1) provides for the application of GST to a supply of tangible personal property where the consideration is paid or becomes due after April 1991, notwithstanding that the property was delivered or ownership therein passed to the purchaser before 1991. New subsection 337(1.1) will relieve from GST a supply of tangible personal property made under an agreement in writing entered into before 1991 where the property was delivered or ownership of the property was transferred to the purchaser before 1991, regardless when the consideration is paid or due.

This amendment is pursuant to the March 27, 1991 press release and is effective January 1, 1991.

Subclause 127(2)

Self-assessment of Tax on Business Purchases Before September 1990

ETA
337(6)

Subsection 337(6) requires businesses to self-assess tax on purchases, made after August 1989 and before September 1990, of property or services to be delivered after 1990. Amended subsection 337(6) is made subject to the general grandfathering rules under subsections 341(1), 342(1) and 343(1) of supplies of services performed substantially (i.e., generally 90% or more) before 1991.

This amendment is effective January 1, 1991.

Clause 128

Transitional - Self-Assessment on Prepaid Supplies

ETA
340.1

Subsections 337(6) and 340(2) require persons, other than consumers, to self-assess and remit tax on property transferred, or services rendered, after 1990 but that were invoiced or prepaid between August 1989 and September 1990. New section 340.1 will allow for an adjustment where the amount of tax remittable changes, (e.g., in the case where the consideration for the supply is altered).

This amendment is pursuant to the March 27, 1991 press release and is effective January 1, 1991.

Clause 129

Prepaid Supplies

ETA
341(3)

GST applies to a service (other than a transportation service) provided after 1990 where the consideration for the supply is paid or becomes due after August 1990. New subsection 341(3) clarifies that GST will not apply to consideration that is paid after August 1990 but that was due (e.g., an invoice was issued) before September 1990.

This amendment is pursuant to the March 27, 1991 press release and is effective January 1, 1991.

Clause 130

ETA
341.1 and 342

Section 341.1 Contingency Fees, Executors, Trustees in Bankruptcy etc.

The Act currently provides that consideration paid or becoming due before May 1991 that relates to a service performed before 1991 is not subject to GST. The amendment extends this transitional relief to certain classes of service where the supplier is legally prevented from submitting an invoice for pre-1991 services before May 1991. For example, where a lawyer represented a client on a contingency fee basis (i.e., the lawyer's fee was calculated as a percentage of any damage award he was able to secure for his client) and performed the legal services before 1991, it may be the case that the decision of the court is not rendered until after May 1991. This would prevent the lawyer from issuing an invoice for his or her services until after that date. Pursuant to new section 341.1, GST would not apply to such a billing.

Section 342 Passenger Transportation

Subsection 342(2) provides that tax applies to 50% of the consideration (e.g., the ticket price) for a passenger transportation service that commenced before 1991 and was completed after January 1991. New subsections 342(1) and (2) simplify the rule to provide that GST does not apply to any passenger transportation service that commenced before 1991, regardless of when the service was completed.

This amendment is pursuant to the December 18, 1990 press release and is effective January 1, 1991.

Clause 131

Transitional Credit for Small Businesses

ETA
346(1)

Pursuant to subsection 346(1), certain registrants are entitled to a transitional credit for small businesses. Registrants who are quarterly or monthly filers and eligible to claim the transitional credit for small businesses were required to do so, in the case of quarterly filers, in the return for their first fiscal quarter beginning in 1991, or, in the case of monthly filers, in the return for the last fiscal month of that quarter. Pursuant to the November 5, 1991 press release, this amendment allows registrants to claim the transitional credit in the return for any subsequent reporting period ending in 1991 provided that the return is filed before 1993.

This amendment is effective January 1, 1991.

Clause 132

Transitional Credit for Small Supplier Taxi Operators

ETA
346.1

This amendment adds new section 346.1, which permits a person who is a small supplier carrying on a taxi business and who is required to register pursuant to new subsection 240(1.1), to claim a special transitional credit of $300. Under existing section 346, a person who qualified as a small supplier in their first fiscal quarter beginning in 1991 is not entitled to claim a transitional credit.

A small supplier taxi operator must have registered before April 1991 in order to claim this special transitional credit. The $300 credit may be claimed in a return for the operator's last reporting period in the first fiscal quarter of the operator beginning in 1991 or for any subsequent reporting period ending in 1991. However, the credit may be claimed in a reporting period only to the extent that it does not generate a net tax refund, or a larger refund than would otherwise be the case, for the operator in that period. Where it would do so, the credit, or a portion thereof, may be deducted against positive net tax of a subsequent reporting period ending in 1991, provided the return for that reporting period is filed before 1993.

This amendment was announced in the press release of December 18, 1990 and is effective January 1, 1991.

Clause 133

Excise Tax Exemption - Air Conditioners

ETA
Schedule I, Section 8

Section 8 of Schedule I currently exempts from the application of the $100 excise tax on automobile air conditioners those air conditioners that are sold under conditions that qualify the sale as a zero-rated supply for GST purposes. This amendment provides that automobile air conditioners are also exempt from the tax when purchased by foreign diplomatic and consular officials in Canada who are entitled to relief from the GST under the *Foreign Missions and International Organizations Act.*

This amendment ensures that the exemption from the excise tax on automobile air conditioners that was granted to diplomats and consular officials under the former sales tax system continues to be granted under the GST.

This amendment is effective January 1, 1991.

Clause 134

Excise Tax Exemption - Heavy Automobiles

ETA
Schedule I, Section 10

Section 10 provides an exemption from the excise tax on heavy automobiles for those which are sold under conditions that qualify the sale as a zero-rated supply for GST purposes. The amendment to the section expands the exemption to include heavy automobiles purchased by foreign diplomats and consular officials in Canada who are entitled to relief from the GST under the *Foreign Missions and International Organizations Act.*

This amendment ensures that the excise tax relief for heavy automobiles that was granted to diplomats and consular officials under the former federal sales tax continues under the GST.

This amendment is effective January 1, 1991.

Clause 135

Real Property Exemptions

ETA
Schedule V, Part I, Sections 2 to 6

Section 2 Sales of Residential Complexes Other Than by the Builder

Section 2 exempts the sale of a residential complex or a new addition to a multiple unit residential complex or an interest therein by a person who is not the builder, unless the person has claimed an input tax credit in respect of the acquisition of or an improvement to the complex.

As a person can acquire a property more than once, the amendment to section 2 clarifies that a residential complex does not qualify for the exemption if the person claimed an input tax credit in respect of the last acquisition of the property or an improvement acquired or imported after the last acquisition of the property.

This amendment is effective January 1, 1991.

Section 3 Complexes for Builder's Personal Use

Section 3 exempts the sale of a self-built home by an individual who has used the dwelling primarily as a residence, unless the individual has claimed an input tax credit in respect of the acquisition of the home or an improvement thereto.

As in section 2, the amendment to section 3 clarifies that the acquisition referred to in section 3 is the last acquisition of the property. As a result, the sale of a self-built home by an individual is not exempt if the individual claimed an input tax credit in respect of the last acquisition of the real property or an improvement acquired or imported after the last acquisition of the real property.

This amendment is effective January 1, 1991.

Section 4 Complexes Self-Supplied by Builder

Section 4 exempts the sale of a single unit residential complex or a residential condominium unit where the sale is made by the builder and the builder has previously self-supplied under section 191 in respect of the complex or unit, provided the builder did not claim an input tax credit after the self-supply.

The amendment to paragraph 4(a) deals with the situation where a builder converts a multiple unit residential complex (e.g., an apartment building) on which tax was previously paid into a condominium complex. The paragraph exempts the sale of a condominium unit in the complex by the builder provided:

- the builder received an exempt supply of the complex by way of sale – e.g., the builder made a taxable sale of the complex to another person after it was built and subsequently re-acquires the complex as an exempt used residential complex, which the builder then converts to a condominium complex; or

- the last sale of the complex to the builder was a deemed sale under subsection 191(3) – e.g., the builder, after completing the construction of the complex, made an exempt lease of a unit in the complex which caused the self-supply rules in section 191 to apply and, at some later time, the builder converts the residential complex into a condominium complex.

Paragraph 4(b) deals with the case where a builder re-acquires a single unit residential complex (e.g., a house) or a residential condominium unit after the builder has made a taxable supply of the unit or complex. The paragraph exempts the subsequent sale of the complex or unit by the builder provided:

- the builder received an exempt supply of the complex or unit by way of sale – e.g., the builder made a taxable sale of the property after constructing it and subsequently purchases it or repossesses it as an exempt residential property; or

- the builder last acquired the complex or unit by way of a deemed sale under subsection 191 (1) or (2).

New paragraph 4(c) provides that the sale of the complex or unit by the builder is not exempt under section 4 if the builder substantially renovated the complex or unit, or engaged another person to substantially renovate the complex or unit, after the last acquisition of the complex or unit by the builder. As an example, consider a builder who makes a taxable sale of a house, re-acquires it as an exempt used residential property, substantially renovates it and then sells it. Paragraph 4(c) ensures that the last sale is taxable.

Paragraph 4(d) provides that the sale of a complex or unit by the builder is not exempt under section 4 if the builder claimed an input tax credit in respect of the last acquisition of the complex or unit or an improvement thereto acquired or imported after the last acquisition of the complex or unit.

The amendments to section 4 are pursuant to the November 5, 1991 press release and are effective January 1, 1991.

Section 5 Multiple Unit Residential Complex Self-Supplied by Builder

Existing section 5 exempts the sale of a multiple unit residential complex by the builder of the complex or an addition to the complex where the builder was previously deemed under section 191 to have made a supply of the complex or the addition and has not claimed an input tax credit since that time.

The amendment to section 5 parallels the changes made to section 4 for single unit residential complexes and residential condominium units and applies those changes to multiple unit residential complexes. The amendment to section 5 clarifies that the exemption applies in the case where a builder of a complex or an addition to the complex has previously made a taxable supply of the property and thereafter re-acquires the property after it has been occupied by an individual as a place of residence and resells the property.

The amendment to paragraph 5(a) deals with the case where a builder re-acquires a multiple unit residential complex after the builder has made a taxable supply of the complex. It exempts the subsequent sale of the complex by the builder provided the builder received an exempt supply of the complex by way of sale.

The amendment to paragraph 5(b) deals with the case where a builder of an addition to a multiple unit residential complex who has made a taxable supply of the addition, re-acquires the complex and sells the complex. The amendment exempts the sale of the complex provided the builder received an exempt supply of the addition by way of sale.

As in existing section 5, the sale of the complex is exempt if the builder last acquired the complex or the addition by way of a deemed sale under subsection 191(3) or (4).

New paragraphs 5(c) and (d) restate the existing conditions of section 5. Paragraph 5(c) provides that the exemption does not apply if the builder substantially renovated the complex, or engaged another person to substantially renovate the complex, after the last acquisition of the complex by the builder. Under paragraph 5(d), the exemption does not apply if the builder claimed an input tax credit in respect of the last acquisition of the complex or an improvement which was acquired or imported after the last acquisition of the complex.

These amendments are pursuant to the November 5, 1991 press release and are effective January 1, 1991.

Section 5.1 Sale of Building and Lease of Land

New section 5.1 addresses the situation where a builder sells a new house to an individual but leases the land. This recognizes that the builder is required to self-supply on the house and land under new subparagraph 191(1)(b)(ii). Section 5.1 exempts the sale of a building that contains residential units (e.g., a house) where the building is sold to the lessee of the land on which the building is situated. In order to qualify for the exemption, the building must be situated on the land both immediately before and immediately after it is sold and the lease of the land must be exempt by virtue of subparagraph 7(a)(i) of Part I of Schedule V.

This amendment is related to changes to subparagraph 191(1)(b)(ii) which require a builder who sells a house and leases the land to self supply on the fair market value of the land and house. The amendment is also related to new section 254.1 which provides a New Housing Rebate to an individual purchasing the house for use as a primary place of residence.

This amendment is pursuant to the press release or March 27, 1991 and applies to every supply of real property other than a supply under which ownership or possession is transferred to the recipient before March 28, 1991 or under an agreement in writing entered into before March 28, 1991.

Section 5.2 Sale of Previously Leased Land

New section 5.2 complements section 5.1 which deals with the sale of a house and a lease of the land on which the house is situated. Section 5.2 addresses the situation where the leased land on which the house is situated is sold.

Section 5.2 exempts the sale of land that forms part of a residential complex where the land is sold without the building that is situated on the land, provided that:

- if the building and the land were sold together at that time, the sale would have been an exempt sale of a used residential complex under any of sections 2 to 5 of Part I of Schedule V; and
- immediately before the land is sold, the land was being leased on an exempt basis under paragraph 7(a) of Part I of Schedule V – i.e., the land was leased for at least one month to an owner or occupant of a residential unit affixed to the land for use by an individual as a place of residence.

This amendment is pursuant to the press release of March 27, 1991 and is effective January 1, 1991.

Section 5.3 Supply of Residential Trailer Park

New section 5.3 exempts the supply of land that is a residential trailer park.

Paragraph 5.3(a) provides that in order to qualify for the exemption, the supplier must have acquired the land as an exempt residential trailer park – i.e., the acquisition by the supplier was exempt under this section – or, the supplier was deemed, under section 190 or the change-in-use rules for real property, to have received a taxable supply of the land as a result of using the land as a residential trailer park.

Paragraph 5.3(b) deals with the situation where the residential trailer park was increased in size prior to being sold. The paragraph provides that the sale of the trailer park in these cases is exempt if the supplier received an exempt supply of the increased area under this section or if the supplier self-supplied or was deemed to have collected tax under the change-in-use rules as a result of using the increased area as a residential trailer park.

Section 5.3 further provides that the exemption does not apply if the person supplying the park claimed an input tax credit in respect of the last acquisition of the park or an addition thereto, or in respect of an improvement to the park or additional area after the last acquisition of the park or the addition.

Where the person increased the size of the park and did not self-supply or collect tax under the change-in-use rules on the additional area, subsection 136(4) deems separate supplies of the park and the increased area. As a result, the supply of the increased area is taxable and the supply of the park is exempt under this section.

Section 5.3 is pursuant to the press release of November 5, 1991 and is effective January 1, 1991.

Section 6 Residential Leases

Existing section 6 exempts rentals of a residential complex (such as a house) or a residential unit (such as an apartment) for a term of a month or more and short-term accommodation (such as in a rooming or boarding house) where the charge is not more than $20 per day or $140 per week.

The changes to section 6 clarify that the reference to the "same individual" is a reference to the individual for whose use as a place of residence or lodging the complex or unit is leased. The amendment also deletes the reference to $140 per week in the case of short term accommodation as this reference is redundant.

This amendment is effective January 1, 1991.

Clause 136

Meals Supplied with Long-term Lease

ETA
Schedule V, Part I, Section 6.2

New section 6.2 exempts meal plans which are supplied together with exempt residential rental accommodation.

To qualify for the exemption, the meals must be provided to tenants by the person who is supplying the exempt residential rental accommodation to the tenants. There must also be at least 10 meals per week sold for a single price determined before any meals are provided under the plan to the recipient and the meals must be served in the tenant's place of residence.

Section 6.2 is pursuant to the press release of December 18, 1990 and is effective January 1, 1991.

Clause 137

ETA
Schedule V, Part I, Sections 7, 8 and 8.1

Section 7 Lease of Land for Mobile Home etc.

Section 7 exempts the lease of land for a period of one month or longer to the owner or lessee of a mobile home or any other residential unit situated on the land for use as a place of residence, (e.g., pad rentals in a mobile home park or a long-term ground lease on which a residence is situated).

Paragraph 7(a) extends the exemption to apply to cases where the lease of the land is to an occupant of a residential unit who is not the owner or lessee of the unit as well as to builders of residential complexes.

This amendment is effective January 1, 1991.

Paragraph 7(b) further extends the exemption to include leases of land in a residential trailer park to owners, lessees or occupants of mobile homes, travel trailers or motor homes. It should be noted that the exemption under paragraph 7(b) is applicable only to leases in a residential trailer park that is defined in subsection 123(1) as a trailer park where at least 90% of the leases are for at least one month in the case of mobile homes and at least twelve months in the case of a travel trailer or motor home.

This amendment is pursuant to the November 5, 1991 press release and is effective January 1, 1991, except that paragraph 7(b) does not apply to a lease of a site in a residential trailer park for use by a travel trailer or motor home before November 5, 1991.

Finally, paragraph 7(c) extends the exemption to include an assignment of a lease that is exempt under section 7.

This amendment is effective January 1, 1991.

Section 8 Sale of Parking Space

Existing section 8 exempts the supply of a residential parking space where the supply is incidental to the supply of residential property.

Section 8 is amended to apply only to sales of parking spaces in a condominium complex. Leases of parking spaces are dealt with under new section 8.1.

Section 8 deals with the situation where a parking space is sold to a purchaser of a residential condominium unit and the parking space is not part of the condominium unit being sold. Section 8 exempts the sale of the parking space provided:

- the parking space is located in the condominium complex,

- the parking space is supplied as part of, or at the same time as, an exempt sale of a residential condominium unit, and

- the supplier of the parking space acquired the space by way of sale (including a deemed sale under the self-supply rules in the case of a builder) and did not subsequently claim an input tax credit with respect to the space.

The amendment to section 8 is pursuant to the press release of November 5, 1991 and is effective January 1, 1991.

Section 8.1 Lease of Parking Space

New section 8.1 exempts the lease of a parking space for a period of at least one month where the lease of the space is incidental to the lease of a residential premise.

Paragraph 8.1(a) exempts the lease of a parking space to an occupant or lessee of a residential unit (e.g., a house or an apartment) or an occupant of a site in a residential trailer park. If the parking space is situated in the same complex as the residential unit or in the park in which the trailer site is situated, it does not matter who supplies the parking space –e.g., it could be a tenant subleasing a parking space to another tenant. If the parking space is not situated in the same complex as the residential unit or in the park in which the trailer site is situated, the lease of the parking space is exempt only if the supplier of the parking space is also supplying the residential unit or the trailer site and the use of the parking space is incidental to the use of the residential unit or the trailer site as a place of residence.

Paragraph 8.1(b) exempts the lease of a parking space to an occupant, owner or lessee of a residential condominium unit provided the parking space is part of the condominium complex in which the condominium unit is located. In this case it does not matter who supplies the parking space.

Paragraph 8.1(c) exempts the lease of a parking space to the owner, lessee or occupant of a floating home (as newly defined in subsection 123(1)) where the supplier of the parking space is also supplying exempt mooring facilities for the floating home and the use of the parking space is incidental to the use of the floating home as a place of residence.

Section 8.1 is added pursuant to the press release of November 5, 1991 and is effective January 1, 1991.

Clause 138

Sales of Real Property by Individual or Trust

ETA
Schedule V, Part I, Section 9

Section 9 exempts the sale of real property by an individual or a trust (all the beneficiaries of which are individuals) but not including capital real property which was used primarily in a business or real property that is sold in the course of a business. The section also allows an individual to elect to treat a sale of real property as taxable where the sale is made in the course of an adventure or concern in the nature of trade.

The amendment to section 9 clarifies that the exemption applies as well to sales made by trusts, all of the contingent beneficiaries of which are individuals or charities. The reference to "contingent" beneficiaries ensures that the exemption applies to a sale, for example, by a testamentary trust having a named contingent beneficiary that is not an individual, such as a charity.

The amendment also clarifies that the election to treat a sale made in the course of an adventure or concern as taxable, applies as well to the above trusts.

This amendment is effective January 1, 1991.

Clause 139

ETA
Schedule V, Part I, Section 13.1, 13.2 and 14

Section 13.1 Cooperative Housing Fees

Section 13 exempts condominium fees charged by a condominium corporation to residential condominium owners or lessees. A parallel exemption is added by new section 13.1 to exempt amounts charged by a cooperative housing corporation in respect of the occupancy of a residential unit managed or owned by the corporation. The definition of "cooperative housing corporation" is found in subsection 123(1).

This amendment is pursuant to the press release of December 18, 1990 and is effective January 1, 1991.

Section 13.2 Moor and Wharf Rentals

New section 13.2 exempts the lease of a wharf or moorage facility to a person who is the owner, lessee or occupant of a floating home. To qualify for the exemption, the lease must be for a period of at least one month and must be attributable to the use and enjoyment of the floating home as a place of residence by an individual. Floating home is defined in subsection 123(1) as a structure consisting of a building that is permanently affixed to a floating platform which is not capable of self-propulsion and which is designed to be occupied as a place of residence for individuals. Pleasure craft, houseboats, etc. are not floating homes, even if used for residential purposes.

This amendment is pursuant to the press release of March 27, 1991 and is effective January 1, 1991.

Section 14 Application of Self-Supply Rules

Under section 14, the self-supply rules in section 191 are deemed to have been in force at all times before 1991 for the purposes of determining whether a sale of a residential complex constitutes an exempt sale of a "used" premises under section 4 or 5 of this Part. As a result, a residential complex that was constructed and occupied prior to 1991 is generally exempt when sold after 1990.

The amendment to section 14 is consequential to the addition of new subsections 190(4) and (5) and new sections 5.2 and 5.3 of Part I of Schedule V. By including a reference to these provisions, the amendment ensures that supplies of trailer parks which were occupied prior to November 6, 1991 and land which was leased for residential purposes prior to March 28, 1991 are exempt under sections 5.2 or 5.3.

This amendment is effective as of January 1, 1991.

Clause 140

Definition "health care facility"

ETA
Schedule V, Part II, section 1

The amendment to the definition "health care facility" deletes the reference to terms used in the *Canada Health Act* and instead describes the residential care and nursing home establishments which are included in the definition.

This amendment was announced in the March 27, 1991 press release and is effective January 1, 1991.

Clause 141

Definition "homemaker service"

ETA
Schedule V, Part II, Section 1

The definition "homemaker service" is deleted from section 1 of Part VI of Schedule V and is added to section 1 of Part II of Schedule V to the Act. As a result of an amendment that broadens the exemption for certain homemaker services, persons other than public sector bodies will be able to provide exempt homemaker services in certain circumstances. It is therefore more appropriate to include this exemption in Part II of Schedule V – Health Care

Services - rather than in Part VI of the same Schedule – Public Sector Bodies.

The amendments to the exemption for homemaker services were announced in the March 27, 1991 press release and are effective April 1, 1991.

Clause 142

Supply of Homemaker Services

ETA
Schedule V, Part II, Section 13

Section 16 of Part VI of Schedule V currently exempts a supply of a homemaker service where the supply is made by a government or a municipality, or by a non-profit organization that receives an amount paid by a government or municipality in respect of the supply. In addition, supplies of homemaker services by registered charities are exempt under section 2 of Part VI of the Schedule.

The proposed amendment extends the exemption for homemaker services to supplies made by a person – including a for-profit business – that receives an amount in respect of the supply from a government, a municipality, or an organization delivering a government or municipal program for the purpose of funding homemaker services.

In addition, as the proposed amendment provides that persons other than public sector bodies can provide exempt homemaker services, the existing provision is moved from Part VI of Schedule V – Public Sector Bodies to Part I of the same Schedule – Health Care Services.

This amendment, announced in the March 27, 1991 press release, applies to supplies for which no consideration became due or was paid before April 1991.

Clause 143

Definition "regulatory body"

ETA
Schedule V, Part III, Section 1

In accordance with the extension of the exemption under section 6 of Part III of Schedule V to courses and examinations offered by federal regulatory bodies, the definition "provincial regulatory body" in section 1 of that Part is repealed and replaced with the broader definition "regulatory body" which includes bodies constituted or empowered by an Act of Parliament. This new definition is added as of January 1, 1991. However, pursuant to subclause 144(2), the exemption for supplies made by federal regulatory bodies applies only after November 5, 1991, as announced in the press release of that day.

Clause 144

Professional or Trade Accreditation

ETA
Schedule V, Part III, Section 6

Existing section 6 of Part III of Schedule V exempts courses and examinations in respect of a professional or trade accreditation recognized by a provincial regulatory body. The amendment will ensure federal regulatory bodies are treated the same way as their provincial counterparts, for the purposes of this section.

Section 6 is also amended to exempt the supply of a certificate or examination in respect of a course or in respect of an accreditation or designation described in that section.

These amendments, announced in the November 5, 1991 press release, apply in respect of courses commencing, examinations administered, and certificates issued, after November 5, 1991.

Clause 145

Ancillary Mandatory Fees

ETA
Schedule V, Part III, Section 7.1

Section 7 of Part III of Schedule V exempts tuition fees for courses that are offered by a university, public college or school authority and for which credit may be obtained toward a diploma or degree.

New section 7.1 clarifies that the exemption extends to other mandatory fees related to registration in those courses, such as student council fees or athletic fees. However, the exemption does not apply to mandatory fees for tangible property.

Consistent with administrative practice and as announced in the March 27, 1991 press release, this amendment is effective January 1, 1991.

Clause 146

Vocational Schools

ETA
Schedule V, Part III, Section 8

This section is amended to extend the existing exemption for courses leading to certificates or diplomas to include all course offered by educational institutions that are governed by federal or provincial legislation respecting vocational schools. In the absence of this amendment, the exemption applies only to courses where the certificate, diploma, or other document is prescribed by regulations, with the result that many secretarial schools and business schools, for example, would not be exempt. The amendment also extends the exemption to courses that lead to certificates or diplomas, where the course is provided by a non-profit organization or a charity.

This amendment, announced in the March 27, 1991 press release, applies in respect of any course for which consideration became due, or was paid without having become due, after March 31, 1991.

In addition, this section is further amended, effective November 6, 1991, to exclude from the exemption any supplies which are zero-rated under Schedule VI of the *Excise Tax Act*. This is consequential to the addition of section 18 of Part V of Schedule VI which, as announced in the November 5, 1991 press release, zero-rates certain courses of this nature commencing after November 5, 1991 and examinations administered after that date. As a result, most training services provided to non-resident corporations are zero-rated, rather than exempt.

Clause 147

Student Tutoring

ETA
Schedule V, Part III, Sections 9 and 10

This amendment consolidates two exempting provisions – sections 9 and 10 of Part III --into one section, thereby simplifying the application of the exemption. It also clarifies the scope of the exemption for pre-requisite courses.

Specifically, under the existing provisions, tutoring is exempt only when the course follows the curriculum of a school authority, or is a prescribed equivalent of such a course. Tutoring for courses outside the curriculum but approved for credit by a school authority, or for pre-requisite courses, is taxable. Existing section 10 exempts only instruction services where the course is a pre-requisite to a course that follows a curriculum, or is a prescribed equivalent of such a course.

The amended and consolidated section 9 expands the exemption to include any tutoring or instruction for a course approved for credit by a school authority, and expands the exemption for tutoring to include tutoring for a prerequisite course. The amendment also clarifies that immediate prerequisite courses are exempt, but earlier levels that are not mandatory for admittance into an exempt course are not exempt. It should be noted, however, that music lessons at all levels remain exempt as prescribed equivalents of courses approved for credit by a school authority.

This amendment, announced in the March 27, 1991 press release, is effective as of January 1, 1991.

Clause 148

Non-Credit Courses

ETA
Schedule V, Part III, Section 16

This amendment ensures that the exemption provided for courses (other than courses designed to be taken primarily for recreational purposes) that are part of a program of two or more courses at public colleges or universities is also extended to similar courses offered by school authorities.

For instance, language courses and computer courses offered by a public college, a university, or a school authority will be exempt when part of a program of two or more courses.

In addition, the section is amended to clarify that all courses in sports, games, hobbies or other recreational pursuits that are designed to be taken primarily for recreational purposes are excluded from the exemption, whether or not they are part of a series of courses.

As announced in the March 27, 1991 press release, the amendments apply in respect of any course for which consideration became due, or was paid without having become due, after March 1991.

Clause 149

Child and Personal Care Services

ETA
Schedule V, Part IV, Section 2

Section 2 of Part IV of Schedule V is amended to clarify that supplies of a service of providing care, supervision and a place of residence to children or disabled or underprivileged individuals in a place that is operated by the person that supplies the service are exempt. The amendment clarifies that in order to be exempt, the service must both:

- include care and supervision in a place of residence; and
- be provided directly to the person receiving it (i.e., the supply must be made by the operator of the facility or home).

For example, where a person provides care and supervisory services to residents of a facility but does not operate the facility, GST applies to the services.

Clause 150

Repeal of Definition "homemaker service"

ETA
Schedule V, Part VI, Section 1

The definition "homemaker service" is removed from section 1 of Part VI of Schedule V and is added to section 1 of Part II of that Schedule. The amended exemption for certain homemaker services, added to Part II of Schedule V, provides that persons other than public sector bodies may provide exempt homemaker services in certain circumstances. Hence, it is more appropriate to include this provision in Part II of Schedule V – Health Care Services – and delete it from Part VI of the same Schedule – Public Sector Bodies.

This amendment is consequential to announcements made in the March 27, 1991 press release and is effective as of April 1, 1991.

Clause 151

Definitions Relating to Inter-municipal Supplies Exemption

ETA
Schedule V, Part VI, Section 1

This amendment adds a number of definitions to section 1 of Part VI of Schedule V that are used in new section 28 of that Part. The latter section exempts certain supplies made between municipalities. The definitions relevant for purposes of section 28 are explained further in the commentary on clause 164.

This amendment is effective January 1, 1991.

Clause 152

General Charity Exemption

ETA
Schedule V, Part VI, Section 2

Subclause 152(1)

This amendment deletes the reference to section 6 and 10 of Part VI of Schedule V from section 2 of that Part. Under the existing provision, a supply of property or a service that is included in Schedule VI is excluded from the general exemption under section 2 only if the supply is not exempt under the nominal consideration exemptions under sections 6 and 10. The intention is to ensure that the nominal consideration exemption essentially overrides the zero-rating status. For example, if otherwise zero-rated groceries were distributed free of charge by a charity, the supply would be treated as exempt rather than zero-rated. However, this result is achieved by virtue of the supply falling under section 6 or 10, even if it is excluded from the general charity exemption under section 2. Therefore there is no need to refer to sections 6 and 10 in the general charity exemption.

This amendment is effective as of January 1, 1991.

Subclause 152(2)

This amendment to paragraph 2(h) of Part VI of Schedule V is consequential to the amendment to paragraph 2(m) of that Part. The latter paragraph is broadened to cover supplies by any charity of an admission in respect of a place of amusement. Therefore, paragraph 2(h) is amended to remove reference to an admission in respect of a place of amusement. Paragraph 2(h) continues to exclude from the general exemption for charities a supply of a membership where the membership meets the specific criteria set out in subparagraphs 2(h) (i) and (ii). For example, a supply by a charity of a membership in a recreational club or in another organization that supplies otherwise taxable admissions to members for no extra charge (i.e. other than the membership fee) or for significant discounts, are taxable.

The effective date of this amendment is January 1, 1991.

Subclause 152(3)

Paragraph 2(m) of Part VI of Schedule V clarifies that the supply by a charity of a right of admission to a fund-raising event such as a dinner, ball, concert or similar fund-raising event which is held after April 1991 is not exempt under the general exemption for charities. Section 164 provides that the value upon which tax is payable on such admissions is the fair market value. For example, the portion of the admission to a fund-raising dinner that represents the fair market value of the dinner is taxable. The donation portion for which an income tax receipt is given is not subject to GST.

In addition, amended paragraph 2(m) incorporates the exemption for admissions found in existing paragraph 2(h).

This amendment is effective January 1, 1991 pursuant to the press release of March 27, 1991.

Clause 153

Admissions to Gambling Events

ETA
Schedule V, Part VI, Paragraph 3(e)

This amendment simplifies the rules for charities that sell admissions to events at which games of chance are conducted but are not the principal activity at the event.

Section 3 of Part VI of Schedule V provides that most supplies by a charity are exempt where the supply is made in the course of an activity or business run exclusively by volunteers. Currently, one of the exceptions to this general rule is found in paragraph 3(e) which provides that an admission in respect of a place of amusement at which bets are placed or a game of chance is conducted is not exempt under the section, irrespective of the extent to which the event involves these gambling activities or whether it is run exclusively by volunteers. This is not consistent with the rules under section 5 of Part VI of Schedule V which deal specifically with admissions to places of amusement at which games of chance are conducted and sets out conditions under which such admissions are exempt. That section is concerned only with situations where the principal activity is the playing of games of chance. Therefore, where this is not the principal activity, the event should be treated in the same manner as events at which there are no gambling activities. If the playing of games of chance is not the principal activity, it would not be appropriate to exclude the whole activity from the volunteer exemption.

Accordingly, this amendment clarifies that an admission to a place of amusement will not be excluded from the exemption under section 3 if it is exclusively volunteer-run, unless the principal activity at the place of amusement is the placing of bets or the playing of games of chance. For example, if a raffle is held incidentally with a dinner and a single admission is charged for the entire event, the admission will be exempt if the event is run exclusively by volunteers.

This change is effective January 1, 1991.

Clause 154

Right to Play Games of Chance

ETA
Schedule V, Part VI, Section 5.1

Section 5.1 of Part VI of Schedule V exempts the supply by a charity or non-profit organization of the right to play or participate in a game of chance. For example, the sale of raffle tickets by a charity or non-profit organization is exempt. Games conducted by a lottery corporation are excluded from this exemption, regardless of who sells the right to play.

This provision is amended to clarify, for greater certainty, that this exemption applies only to rights that are not admissions since admissions are dealt with separately under section 5 of Part VI of Schedule V. Under that section, the supply of, for example, an admission to a casino which is run 60% by volunteers and 40% by paid staff would be taxable since section 5 requires that the activity must be run exclusively (generally 90% or more) by volunteers in order to be exempt.

This amendment applies as of January 1, 1991.

Clause 155

Nominal Consideration Exemption

ETA
Schedule V, Part VI, Section 6

This section exempts the supply by a public service body (as defined in subsection 123(1)) of goods or services where the consideration for the supply does not exceed the direct cost of the good or service (as defined in section 1 of Part VI of Schedule V). As announced in the press release of March 27, 1991, section 6 is amended to exclude leases from the exemption (unless entered into on or before that date) and sales of capital property where consideration for the sale becomes due, or is paid without having become due, after March 27, 1991.

Clause 156

Relief of Poverty, Suffering or Distress

ETA
Schedule V, Part VI, Section 14 of French Version

This technical amendment to the French version of the Act does not modify the existing rules. It simply clarifies that the exemption under section 14 of Part VI of Schedule V applies to separate supplies of food, beverages and short-term accommodation and not only to a single, combined supply of these items.

This amendment applies as of January 1, 1991.

Clause 157

Homemaker Services

ETA
Schedule V, Part VI, Section 16

The amendment under clause 142 results in the exemption of certain homemaker services supplied by persons other than public sector bodies. Hence, it is appropriate to include this exemption in Part II of Schedule V – Health Care Services – rather than in Part VI of the same Schedule – Public Sector Bodies. Section 16 of Part VI of Schedule V is therefore repealed and a new provision is added to Part II of Schedule V.

This amendment is consequential to announcements made in the March 27, 1991 press release and is effective as of April 1, 1991.

Clause 158

Election for Public Service Bodies to Tax Memberships

ETA
Schedule V, Part VI, Section 17

This amendment deletes the requirement to file an election with the Minister of National Revenue to treat a membership as taxable. The organization making an election will, however, be obliged to make the election in the form authorized by the Minister and include all the prescribed information as well as maintain on record the election for audit purposes.

This amendment is effective April 27, 1992, pursuant to an announcement by the Minister of National Revenue on that day.

Clause 159

Election to Tax Professional Memberships

ETA
Schedule V, Part VI, Section 18

This amendment deletes the requirement to file an election with the Minister of National Revenue to tax the supply of a membership required to maintain professional status. An organization that so elects will, however, be required to maintain the election in its records for audit purposes, on the form that is authorized by the Minister for this purpose and that contains the prescribed information.

This amendment is effective April 27, 1992 pursuant to an announcement by the Minister of National Revenue on that day.

Clause 160

Fees for Government Services

ETA
Schedule V, Part VI, Paragraph 20(c)

Section 20 of Part VI of Schedule V sets out a number of supplies relating to regulatory and administrative functions that are exempt when made by a government or municipality or by a board, commission or other body established by a government or municipality.

Paragraph 20(b.1) is added to clarify that fees paid for the filing of a document in accordance with legislative requirements are exempt. The filing of documents in a court is exempt under existing paragraph 20(b). New paragraph 20(6.1) extends the same relief to the filing of documents with tribunals, boards and commissions if such filing is required by statute, regulations or rules of procedure. For example, fees paid to file a notice of appeal with the Labour Relations Board would be exempt.

Existing paragraph 20(c) of Part VI of Schedule V provides that the supply of a licence, permit, quota or similar right by a government municipality or a board, commission or other body established by a government or municipality is exempt. This exemption is broadened to include fees for making an application for one of the rights included in paragraph 20(c).

Paragraph 20(f) is amended to extend the exemption with respect to a supply of a service of providing information under the *Access to Information Act*, to include supplies by provinces (or municipalities acting under the authority of provincial statutes), of the service of providing information under similar provincial legislation.

The above changes are effective as of January 1, 1991 and are pursuant to the announcement in the press release of March 27, 1991.

Paragraph 20(*k*) specifies that supplies by a government or municipality, or by a board, commission or other body established by a government or municipality, of the right to take or remove certain natural resource products, such as minerals, forestry products and fishing products, are not exempt when made to consumers or to non-registrants who are in the business of making supplies of these products to consumers. Paragraph 20(*k*) is amended to also exclude from the exemption supplies of the right to take or remove peat and products that grow in water. For example, supplies of the right to take or remove fish, minerals, seaweed, wild rice or peat are taxable when made to consumers or to small suppliers for resale to consumers.

This amendment is effective January 1, 1991.

Clause 161

Water, Sewerage and Drainage Systems

ETA
Schedule V, Part VI, Section 22

Section 22 is amended, effective January 1, 1991, to clarify that the supply of installing, repairing or maintaining a water distribution, sewerage or drainage system that is for the use of an owner or occupant of real property is exempt only when made by a municipality or by an organization designated as a municipality by the Minister of National Revenue for the purposes of this section. For instance, this amendment clarifies that supplies of such services by government bodies are only exempt when the body is designated by the Minister of National Revenue as a municipality for that purpose.

A further clarification, effective after ANNOUNCEMENT DATE, ensures that an organization must meet the condition of operating a system described in section 22 in order to be eligible for designation under the section. For example, only those land developers which operate water distribution or sewerage systems will be designated as municipalities. In that case, their supplies of the service of installing and maintaining such a system are exempt. However, developers that build a system pursuant to a subdivision agreement with a municipality and then supply the system to the municipality for the municipality to operate will be required to collect tax on their services.

The exception to the exemption set out in section 22 is where a municipality or designated entity charges a separate fee to a property owner or occupant to repair or maintain part of an existing system where that part is for the exclusive use of the occupant or owner. For example, where a municipality repairs part of a water distribution system that is for the exclusive use of a homeowner and the municipality bills the homeowner, that fee will be taxable.

Clause 162

Unbottled Water

ETA
Schedule V, Part VI, Section 23

This amendment deletes the reference to "governments" in the exemption under section 23, clarifying that only those supplies of unbottled water by municipalities and organizations designated as municipalities by the Minister of National Revenue for the purposes of the section are exempt. The amendment thus ensures that such supplies by governments are exempt only if the government obtains a designation for purposes of this exemption. This section is designed to enable consumers to buy unbottled water without paying tax by giving non-municipal suppliers, such as water haulers and federal and provincial government bodies, the ability to request designation as a municipality for this purpose. This amendment was announced in the March 27, 1991 press release and is effective January 1, 1991.

Consistent with administrative practice, section 23 is also amended to clarify that the exempt supply of water includes the service of delivering the water. This amendment is also effective January 1, 1991.

In addition, section 23 is amended, as of January 1, 1991, to ensure that drinking water supplied through a vending machine, or otherwise dispensed in a store, in quantities exceeding a single serving will be zero-rated as are large quantities of bottled water.

Finally, as announced in the press release of March 10, 1992, section 23 is amended, with application to supplies invoiced after that date, to provide that all supplies of unbottled water are exempt (irrespective of whether the supplier has been designated as a municipality) unless the supply is made by a government that has not requested designation for this purpose. Provinces and the federal government are required to be designated as municipalities by the Minister of National Revenue in order for their supplies of water to be exempt. The result is that provincial\federal government suppliers will receive the same percentage rebate under section 259 with respect to tax on inputs used in supplying water as other private water suppliers and municipalities.

As a result of these amendments, virtually all supplies of unbottled water made after March 10, 1992 to businesses and households are exempt. Any person who supplies water, such as a water hauler, will be entitled to request designation under section 259 for the purpose of receiving the municipal rebate of GST paid on inputs used in supplying water.

Clause 163

Real Property Supplies by Public Service Bodies

Subclause 163(1)

Sale of Vacant Land to Individuals

ETA
Schedule V, Part VI Paragraph 25(c)

Section 25 of Part VI of Schedule V exempts most supplies of real property by a public service body other than a financial institution or government. Paragraph (c) of this section sets out an exception for vacant land sold to an individual or to certain trusts. The existing paragraph refers to a trust all the beneficiaries of which are individuals. However, many trusts that have only individuals as vested beneficiaries also have a contingent beneficiary which is commonly a charity. The reference to trusts in paragraph (c) is therefore expanded to include trusts where charities are contingent beneficiaries provided all other beneficiaries are individuals.

This amendment applies to any sale of real property other than a sale under which ownership or possession of the property is transferred to the recipient before March 28, 1991 or under an agreement in writing entered into before that day.

Subclause 163(2)

Short-term Leases and licences of Real Property

ETA
Schedule V, Part VI, Paragraph 25(f)

Paragraph (f) of section 25 of Part VI of Schedule V excludes from the exemption under that section supplies of real property by way of lease, licence or similar arrangement for a period of less than one month. This means that the period throughout which the property is continuously made available under the terms of the lease or licence must be at least one month in order for the supply to be exempt. All supplies of real property by way of lease or licence for less than one month are taxable. For instance, a licence, conferred under an agreement enforceable for one year, to use a hockey rink for two hours every Tuesday in the year would be taxable since the recipient would not, at any time in the year, have use of the rink for one month or more.

Paragraph 25(f) is amended to provide that all licences of real property by a public service body are taxable, irrespective of the period of the supply under the licence. Leases of real property for a period of a month or more continue to be exempt.

The following are a few examples of licences which would be taxable:

- a supply by a municipality of the right to use a seasonal campsite for four months;
- the supply by a municipality or a non-profit organization, to an individual, of a right to moor a boat for a six-month period;
- the "letting" of a stall at an exhibition; and
- a grazing permit for cattle which does not permit exclusive possession of the grazing land.

The amendment to paragraph 25(f) applies to any agreements to supply real property by way of licence where the agreement is entered into after September 14, 1992.

Clause 164

ETA
Schedule V, Part VI, Sections 27 and 28

Section 27 Poppies and Wreaths

This amendment provides that all supplies of poppies and wreaths are exempt when made by Vetcraft Shops (administered by the federal Department of Veterans Affairs), or the Dominion Command, any provincial command, or any branch of the Royal Canadian Legion.

This amendment, announced in the March 27, 1991 press release, is effective as of January 1, 1991.

Section 28 Inter-Municipal Supplies

Section 28 of Part VI of Schedule V is added to exempt certain supplies between municipalities and "para-municipal" organizations. This measure recognizes that many municipalities provide municipal services through semi-autonomous bodies which they establish, such as irrigation authorities or fire departments. These organizations are generally referred to as para-municipal organizations.

In addition, in some parts of the country, it is common to have a regional municipal, metropolitan or county structure to provide goods and services on behalf of several municipalities within a region. Since each of these bodies are nevertheless separate legal entitles, under the normal GST rules, tax would apply to supplies made between them.

In recognition of these organizational features of local government, under specified conditions outlined below, this amendment will exempt goods and services supplied between certain municipalities. This amendment will also exempt supplies of goods and services between certain municipalities and their para-municipal organizations. Reference should be made to section 1 of Part VI of Schedule V which defines many of the terms used in section 28.

The term "municipality" is broad and includes many forms of local government, such as towns, cities, townships, counties, regional governments and metropolitan authorities. It also includes unincorporated local authorities, such as hamlets or villages. In addition, for the purposes of Part IX of the Act, "municipality" includes any organization determined by the Minister of National

Revenue, under paragraph (b) of the definition of that term in subsection 123(1), to be a municipality. Generally, this includes organizations which act like a municipality by providing a range of municipal services, – e.g., certain irrigation districts.

"Para-municipal" organizations are closely associated organizations created by a municipality. Organizations that might currently be considered to be para-municipal organizations, where the local government owns or controls them, would include planning commissions, social housing authorities, public libraries, hydro-electric commissions, conservation authorities, community centres, fire departments, police departments, health units, local improvement boards and tourism boards, irrigation districts or organizations providing services for the municipality such as water and sewer distribution, erosion control, parks management, or pollution control.

Not all supplies between a municipality and all entities which it may establish are exempt under this provision. The exempt status applies only to supplies between certain municipalities and between municipalities and para-municipal organizations that are owned or controlled by the municipality to such an extent that the organization may be considered to be operating like a municipal department.

In addition, some municipal bodies (referred to as a "provincially established designated body") are established by provinces to perform specific municipal functions and, as such, are designated as municipalities under section 259 only with respect to those specific functions. For example, housing corporations are sometimes established by provinces to carry out the function of providing social housing. Supplies between these entities and the designated para-municipal organizations that they own or control will also be exempt.

In order to be considered a para-municipal organization for the purposes of the exemptions described below, an organization must meet the following two criteria:

- it must be either owned or controlled by the municipality or a "provincially established designated body" (both of which are referred to in the legislation as "municipal bodies"), and

- it must be either determined or designated by the Minister of National Revenue to be a municipality.

The para-municipal organization must be owned or controlled by a person that is either a municipality or a "provincially established designated body". A municipality is considered to own or control a para-municipal organization when all or substantially all of the shares or assets of the organization are held by the municipality or all or substantially all of the assets of the organization are vested in the municipality on the winding-up or liquidation of the organization.

The municipality is also considered to control a para-municipal organization when the latter is required to submit budgets to the municipality and the majority of the governing body of the para-municipal entity is appointed by the municipality.

Under the existing legislation, the Minister of National Revenue may designate an organization to be a municipality for certain purposes under three provisions:

- pursuant to section 259 of the Act, an organization can be designated for the purposes of qualifying for a municipal rebate in respect of supplies of municipal services;

- pursuant to section 22 of Part VI of Schedule V, an organization can be designated in respect of the activity of installing, repairing or maintaining a water distribution, sewerage or drainage system; and

- pursuant to section 23 of Part VI of Schedule V, an organization can be designated in respect of the activity of supplying unbottled water.

In addition, an organization may be determined by the Minister to be a municipality pursuant to paragraph (b) of the definition "municipality" in subsection 123(1) of the Act and, as a result, the organization is treated as a municipality for all purposes of Part IX of the Act.

New section 28 provides as follows:

- Supplies between a municipality or a "provincially established designated body" and any of its para-municipal organizations that has been determined/designated as a municipality and that is owned or controlled by the municipality are exempt. For instance, if a municipality provided accounting services for its own fire department (which has been designated as a municipality), the service would be exempt.

When a para-municipal organization is designated only for certain activities, such as water distribution or social housing, the designated municipal body can transfer goods or services on an exempt basis to a para-municipal organization owned or controlled by that designated municipal body or to another municipality that owns or controls that municipal body. For example, a supply of accounting services from a provincial housing corporation to a municipal housing authority would be exempt, provided both were designated as municipalities for the purposes of providing social housing.

- Para-municipal organizations of the same municipality, both being owned or controlled by that municipality, can supply goods and services to each other on an exempt basis. For example, supplies of literature from a municipal conservation authority to a municipal library board would be exempt if both were designated municipalities and were owned or controlled by the same municipality.
- The provision of goods or services between a regional government and a municipality (or its designated para-municipal organization) within the jurisdiction of the regional government are exempt. For example, the rental of snow removal equipment by a regional municipality to one of the cities, or the city-owned libraries, within the region would be exempt.
- The provision of goods or services between a para-municipal organization of the regional government and a local city, such as the supply of regional police force services to a town in the region or, similarly, to a para-municipal organization of the local city, such as the city police department.
- The provision of goods and services between a regional government or its para-municipal organizations and any para-municipal organization designated as a municipality, would be exempt provided that organization is within the regional government's jurisdiction.

Since municipal designations are limited to certain activities in some cases (e.g., designations under section 23 of Part VI of Schedule V or under section 259 of the Act), the inter-municipal supply exemption will apply in respect of supplies made to or by organizations so designated only where the supplies are made in the course of the activities for which the organizations have been designated. This recognizes that the designated activities represent the only capacity in which the organizations are considered to be like a municipality.

It should be noted that supplies between neighbouring municipalities are not covered by this exemption, even if the municipalities are within the area of jurisdiction of the same regional government. Similarly, supplies between para-municipal organizations of neighbouring municipalities, or supplies between a para-municipal organization of one municipality and a neighboring municipality are not covered by this exemption, even if the entities are within the jurisdiction of the same regional government.

New section 28 is effective January 1, 1991 pursuant to the March 27, 1991 press release.

Clause 165

International Ferry Services

ETA
Schedule V, Part VIII, Section 1

Section 1 of Part VIII of Schedule V exempts most ferry services. The amendment removes zero-rated international ferry transportation services from this exemption. This change, in conjunction with the addition of new section 13 of Part VII of Schedule VI, ensures that a registered operator of a zero-rated international ferry service is not only not required to charge tax on the service but, because the operator is not treated as engaged in an exempt activity, the operator is entitled to claim input tax credits in respect of that service. Thus, international ferry transportation services are treated the same for GST purposes as other zero-rated international transportation services.

Domestic ferry services, described in this sectIon, which operate between points in Canada remain exempt under the GST and, therefore, operators of such ferries are not entitled to input tax credits in respect of those services.

The amendment is consistent with current administrative practice and is effective January 1, 1991.

Clause 166

Heading "Prescription Drugs and Biologicals"

The heading to Part I of Schedule VI is amended, consequential to the addition of new section 5 of that Part (see commentary on clause 168).

Clause 167

Zero-rated Drugs

Subclause 167(1)

Schedule C and F Drugs

ETA
Schedule VI, Part I, Paragraphs 2(a) and (b)

Paragraph 2(a) Schedule C Drugs

This paragraph is amended to zero-rate the supply of drugs included in Schedule C to the *Food and Drugs Act*. Schedule C drugs are essentially radiopharmaceuticals used primarily for diagnostic purposes. Such drugs are normally supplied to hospitals, clinics and medical practitioners, as only medical practitioners are allowed to administer these substances.

This amendment, announced in the March 27, 1991 press release, applies to drugs imported after March 1991 and to supplies in Canada for which tax did not become payable before April 1991.

Paragraph 2(b) Schedule F Drugs

This amendment ensures the wording in paragraph 2(b) is consistent with that of paragraph 2(a) by referring to drugs "included", as opposed to "described", in the relevant Schedule to the *Food and Drugs Regulations*. This amendment is made for clarification purposes only and has the same application date as the amendment to paragraph 2(a) described above.

Subclause 167(2)

Supplies of Drugs Under Emergency Drug Release Program

ETA
Schedule VI, Part I, Paragraph 2(f)

Under the *Food and Drug Regulations*, The Department of Health and Welfare provides a service through which Canadian practitioners can obtain the emergency release of a quantity of an experimental drug that has not yet been approved for marketing or sale in Canada. This service is known as the Emergency Drug Release Program.

Drugs released through this program and sold in Canada are currently zero-rated under section 3 of Part 1 of Schedule VI to the Act only when dispensed by a practitioner or when supplied on the written order of a practitioner. These drugs are otherwise taxable at 7%, including when they are imported, since section 6 of Schedule VII to the *Excise Tax Act* (non-taxable importations) zero-rates the importation of only those drugs mentioned in section 2 of Part I of Schedule VI.

This amendment adds drugs released through the Emergency Drug Release program to the list of zero-rated drugs included in section 2 of Part I of Schedule VI. The amendment applies to drugs imported after ANNOUNCEMENT DATE and to supplies in Canada where the drugs are delivered to the recipients after ANNOUNCEMENT DATE.

Clause 168

Artificial Insemination

ETA
Schedule VI, Part I, Section 5

This amendment adds new section 5 to Part I of Schedules VI, which provides that supplies of human sperm are zero-rated under Part I of Schedule VI to the *Excise Tax Act*.

This amendment, announced in the March 27, 1991 press release, is applicable for supplies in respect of which tax did not become payable before April 1991.

Clauses 169 to 174

Medical Devices

ETA
Schedule VI, Part II, Sections 5.1, 21.1, 21.2, 23.1, 33.1 and 34 to 36.

Part II of Schedule VI to the *Excise Tax Act* zero-rates a number of assistive devices used by individuals in the treatment of a long term illness or a physical disability. These amendments add a number of items to the list of zero-rated medical devices.

With the exception of the amendment to section 34 of this Part (as described below), these amendments, announced in the November 5, 1991 press release, apply in respect of property imported after November 5, 1991 and supplies in Canada for which, on or before that date, tax was not paid and did not become payable.

The amendment to section 34 of this Part provides, for greater certainty, that the service of installing, maintaining, restoring, repairing or modifying medical devices is not zero-rated if it is performed for cosmetic, rather than medical or re-constructive, purposes. Cosmetic services are excluded from the general exemption for medical services. This amendment applies to supplies made after September 14, 1992.

Clause 175

Basic Groceries

ETA
Schedule VI, Part III, section 1

Subclause 175(1)

Yoghurt, Puddings and Beverages

ETA
Schedule VI, Part III, Paragraph 1(n)

Existing paragraph 1(n) of Part III of Schedule VI describes the circumstances in which single servings of yoghurt, puddings and beverages are excluded from the list of zero-rated supplies under section 1 of the Part and therefore are subject to tax.

The amendment results in the zero-rating of yoghurt sold in single servings by removing the reference to "yoghurt" from paragraph 1(n). Under the existing provision, single servings of yoghurt are zero-rated only when pre-packaged and sold in multiples. Consultations with grocery distributors and others in the retail industry revealed that consumers typically purchase yoghurt for home consumption in significant quantities of individual single servings. The application of tax to single servings in this circumstance is not consistent with the principle that basic groceries purchased for home consumption be zero-rated. This amendment applies to supplies of yoghurt in respect of which tax did not become payable before March 28, 1991.

The amendment also excludes from the zero-rated supplies, supplies of single servings of flavoured gelatine, mousse, flavoured whipped dessert products and other products similar to pudding unless the product is prepared and pre-packaged specially for babies, sold in multiples of single servings which are pre-packaged by the manufacturer in that form or sold in a primary container which contains a quantity exceeding a single serving. This change provides that single servings of prepared dessert products have the same taxable status as single servings of pudding, ensuring competitive equity between these products in the marketplace. This change applies to supplies in respect of which tax did not become payable before March 28, 1991.

In addition, the amendment clarifies that packages of multiples of single servings of beverages and puddings pre-packaged in that manner by the manufacturer of the products. This ensures that single servings of puddings or beverages are subject to tax when packaged into multiples by a person other than the manufacturer – for example, by a retailer or consumer. This clarification applies as of January 1, 1991 and, therefore, also applies to supplies of yoghurt in respect of which tax became payable before March 28, 1991.

The above amendments were announced in the press release of March 27, 1991.

Subclause 175(2)

Unbottled Water and Ice

ETA
Schedule VI, Part III, Paragraph 1(r)

This amendment removes supplies of unbottled water, other than ice for human consumption, from section 1 of the zero-rated basic groceries schedule. Section 23 of Part VI of Schedule V generally exempts supplies of unbottled water when made by municipalities or organizations designated as municipalities for that purpose. However, section 23 does not exempt zero-rated supplies of water. This amendment ensures that the reference to zero-rated supplies in section 23 is a reference only to supplies of dispensed unbottled water that is zero-rated under new section 2 of Part III of Schedule VI – i.e., when the water is dispensed to consumers in quantities exceeding a single serving through a vending machine or at a permanent establishment of the supplier.

This amendment applies to supplies no part of the consideration for which becomes due or is paid before May 1991.

Clause 176

Unbottled Water Sold in Retail Stores

ETA
Schedule VI, Part III, section 2

The amendment adds new section 2 to Part III of Schedule VI which zero-rates a supply of unbottled water for human consumption when the water is dispensed to a consumer in a quantity exceeding a single serving through a vending machine or at a permanent establishment of the supplier.

The amendment ensures that the GST treatment of such supplies of unbottled water is comparable to the treatment of supplies of bottled water made in retail establishments, which are zero-rated when packaged for sale to consumers in quantities exceeding a single serving.

The amendment is consistent with administrative practice and is effective January 1, 1991.

Clause 177

Feedlots

ETA
Schedule VI, Part IV, section 2.1

The amendment, adding new section 2.1 to Part IV of Schedule VI, combined with new section 164.1 of the Act, zero-rates the portion of a feedlot's charge for service which is reasonably attributable to feed for zero-rated livestock, up to a maximum of 90% of the entire charge by the feedlot. Under the existing provisions, a feedlot is generally required to charge tax on its entire invoiced price. This result is not consistent with the objective of zero-rating supplies of feed for zero-rated livestock.

New section 2.1 of Part IV of Schedule VI zero-rates a supply, made by a feedlot operator, which is deemed to be a separate supply of feed under new subsection 164.1(2).

This amendment was announced in the press release of June 24, 1991 and is effective January 1, 1991.

Clause 178

Fertilizer

ETA
Schedule VI, Part IV, Section 5

Existing section 5 of Part IV of Schedule VI zero-rates supplies of bulk fertilizer sold in quantities exceeding 500 kilograms (kg).

Section 5 is amended to also zero-rate a supply of bagged fertilizer where the fertilizer is supplied in bags containing at least 25 kg of fertilizer and where the total quantity of fertilizer supplied to a person at one time is 500 kg or more. This provision is intended to streamline the administration of the tax for farmers and improve their cash flow position. This change was announced in the press release of March 10, 1992 and applies to supplies of fertilizer delivered after that date.

Further consultations with the industry after March 10, 1992 revealed that fertilizer is also sold to farmers in containers other than bags. Therefore, section 5 is further amended by replacing the reference to "bag" in this section with a reference to "container". This latter change applies to supplies of fertilizer delivered after ANNOUNCEMENT DATE.

Clause 179

Exported Goods

ETA
Schedule VI, Part V, Section 1

Section 1 of Part V of Schedule VI zero-rates supplies of goods that are delivered in Canada and exported by the purchaser. Paragraph (d) of that section is amended to zero-rate supplies made to persons possessing export certificates and paragraph (e) is deleted to zero-rate a supply of goods which are exported by means of a motor vehicle of the recipient.

Paragraph 1(d) Use of Export Certificate

In order for a supply to be zero-rated under section 1 of Part V of Schedule VI (the "Export Schedule"), paragraph (d) of that section requires the supplier to maintain evidence satisfactory to the Minister of National Revenue that the goods were in fact exported.

This paragraph is amended to provide that a recipient may, in satisfaction of this evidence of export requirement, provide the supplier with an export certificate described in new subsection 221.1(2). The conditions under which the Minister may authorize the use of such certificates are set out separately in new section 221.1. Briefly, that section provides that, where the Minister is satisfied that at least 90% of a registrant's business consists of export trading activities – i.e., buying goods in Canada for resale into the export market – the Minister may authorize the registrant to provide suppliers with an export certificate to satisfy the evidence of export requirements in paragraph (d) of section 1 of the Export Schedule.

This change is consequential to the introduction of section 221.1, which sets out the rules for export trading houses. Those rules were announced in the March 27, 1991 press release and are effective as of January 1, 1991. The amendment to paragraph (d) is also effective January 1, 1991.

Repeal of Paragraph (e) Truck Exports

Paragraph (e) of section 1 of the Export Schedule provides that a supply of goods is zero-rated under at section only if any highway transportation of the goods in Canada occurring after the goods are delivered to the recipient is by means of a common carrier.

The amendment deletes this paragraph, effectively allowing the zero-rating of a supply of goods to a recipient where the goods are exported by means of a motor vehicle owned by or operated on behalf of the recipient. This change followed consultations with industry, through which it was determined that the common carrier requirement was onerous for many non-resident businesses to comply with and that the requirements set out in paragraphs (a) to (d) in section 1 of the Export Schedule constituted sufficient deterrence against tax avoidance.

The press release of March 27, 1991 indicated that this change would be effective April 1, 1991. However, given that changes to the non-resident rebate under section 252 announced in the same press release substantially overlapped with this provision and are proposed to be effective January 1, 1991, the amendment repealing paragraph (e) will be effective January 1, 1991. This will streamline the operation of the tax and eliminate the need to create an additional assignment provision for non-resident rebates.

Clause 180

Supplies of Fuel to International Carriers

ETA
Schedule VI, Part V, section 2.1

The amendment adds new section 2.1 to Part V of Schedule VI, which zero-rates a supply of fuel made to a registered carrier for use in the course of providing international transportation services.

The amendment will reduce the cash flow costs for registered carriers associated with purchases of fuel, typically the industry's single largest operating cost, where the fuel is used in the provision of international transportation services – i.e., where registered carriers will not, in most cases, be collecting tax on their sales. This measure is intended to improve the competitive position of registered international carriers vis-a-vis unregistered foreign carriers, to whom supplies made in Canada are generally zero-rated under section 2 of Part V of Schedule VI.

This amendment was announced in the press release of November 5, 1991 and applies to supplies of fuel delivered after that date.

Clause 181

Emergency Repair Service

ETA
Schedule VI, Part V, Section 6 of French version

This technical amendment to the French version of the Act does not modify the existing rules but corrects an omission by adding the underlined words which already appear in the English version of the section. This amendment is effective January 1, 1991.

Clause 182

Exported Services

ETA
Schedule VI, Part V, Section 7

Section 7 of Part V of Schedule VI zero-rates exports of certain services supplied to non-residents.

The amendment provides that a supply of a service, to which section 7 of Part V of Schedule VI applies, made to a non-resident individual is zero-rated where the individual does not have contact with the supplier in relation to the supply while the individual is in Canada. The amendment also provides that a supply of a service in respect of tangible personal property made to a non-resident person is not zero-rated if the property is situated in Canada at the time the service is performed. Furthermore, postal services, as well as advisory, consulting and professional services, which are currently zero-rated under this section, are to be zero-rated under new sections 22 and 23 of this Part.

Services Supplied to Non-resident Individuals

Under the existing provisions, a non-resident individual must be outside Canada throughout the time a service is performed in order for the supply of the service made to the non-resident individual to be zero-rated.

The amended section 7 provides that a supply of a service made to a non-resident individual is zero-rated if the individual is outside Canada at all times at which the individual has contact with the supplier in relation to the supply. With this change, the supply of a service made to a non-resident individual will be zero-rated even where the individual visits Canada during the time the service is performed as long as that visit is for reasons unrelated to the performance of the service and hence the individual is not in contact with the supplier in relation to the supply while in Canada.

Services In Respect of Tangible Personal Property

Under the existing provisions of section 7, a supply of a service made to a non-resident person is not zero-rated if it is in respect of tangible personal property that is ordinarily situated in Canada or that is to be delivered in Canada.

The amended section 7 provides that a supply of a service in respect of tangible personal property made to a non-resident person is not zero-rated if the property is situated in Canada at the time the service is performed. This change will remove the uncertainties associated with the application of the existing wording. It also removes any potential overlap with the drop-shipment rules under amended section 179 which, in certain situations, deem a supply of a service made to an unregistered non-resident person in respect of tangible personal property to be made outside Canada if the property is situated in Canada at the time the service is performed.

These amendments apply to supplies of services the performance of which begins on or after the day the amendments are assented to.

Clause 183

Exports

ETA
Schedule VI, Part V, sections 13 to 24

Part V of Schedule VI lists supplies made in Canada that are zero-rated as exports. Section 13 of Part V is amended and a number of new sections are added to this Part.

Section 13 Supplies In Respect of a Warranty Provided by a Non-resident

Under the existing provisions of section 13 of Part V of Schedule VI, only supplies of services, as opposed to property, made to an unregistered non-resident in respect of a warranty provided by the non-resident are zero-rated.

Section 13 is amended to also zero-rate a supply, made to an unregistered non-resident, of tangible personal property where the property is acquired by the non-resident for the purpose of fulfilling a warranty obligation of the non-resident. This measure ensures that parts, as well as services, supplied to an unregistered non-resident in these circumstances are relieved from tax. This measure is consistent with administrative practice and is effective January 1, 1991.

Section 14 Jigs, Dies, Moulds, Tools and Fixtures

Section 14 is added to Part V of Schedule VI, zero-rating a supply, made to an unregistered non-resident, of a jig, die, mould, tool or fixture, or an interest therein, that is to be used directly in the production of goods for the non-resident.

It is a common practice for manufacturing service exporters to supply their non-resident customers with specialized production equipment that remains in Canada to be used in producing goods for export. The amendment provides that supplies of such equipment are zero-rated even though the equipment is not physically exported from Canada. This provision was announced in the press release of March 27, 1991 and is effective January 1, 1991.

Section 15 Natural Gas Exports

The amendment adds section 15 to Part V of Schedule VI, which zero-rates a supply of natural gas, made to a person who is exporting the gas by pipeline, where some of the gas is used as fuel or compressor gas to transport the gas.

It is a common business practice for shippers of natural gas to allow a pipeline carrier to use a small percentage of the gas being shipped to fuel the compressors that move the gas through the pipeline, in return for which the carrier reduces the rate charged to the shipper. Such a supply of natural gas would not be zero-rated, in the absence of this amendment, since some of the gas is consumed or used in Canada. The amendment provides that, although part of a purchase of natural gas may be used as fuel for compressors, this practice will not prevent a supplier from zero-rating a supply of natural gas in these circumstances. This recognizes that the amounts of gas used to fuel the compressors is very small and that the supplies of compressor gas are not made by the purchaser/shipper in the course of a business of supplying compressor gas to pipelines.

This measure was announced in the press release of November 5, 1991 and is effective January 1, 1991.

Section 16 Supplies to Duty-Free Shops

The amendment adds section 16 to Part V of Schedule VI, which allows duty-free shops to be relieved of GST on their purchases of inventory.

This provision is consistent with the measure enabling export trading houses to acquire goods for export on a zero-rated basis through the use of an export certificate. This amendment was announced in the press release of March 27, 1991 and applies to supplies of property delivered after March 1991.

Section 17 Custodial or Nominee Services

New section 17 zero-rates a supply made to a non-resident person of custodial or nominee services in respect of securities of a non-resident. This measure ensures that registered Canadian suppliers of these services are put on an equal footing when competing for the business of non-residents. This provision is consistent with administrative practice and is effective January 1, 1991.

Section 18 Training Services

New section 18 is added to ensure that registered Canadian suppliers of training services described in the section are put on an equal footing with foreign suppliers when competing for the business of non-residents. This measure was announced in the press release of November 5, 1991 and applies to courses commencing, and examinations administered, after that date.

Section 19 Service of Destroying or Discarding Tangible Personal Property for Non-resident

The amendment adds new section 19 to Part V of Schedule VI, which zero-rates a supply, made to an unregistered non-resident person, of a service of destroying or discarding tangible personal property.

This provision ensures that registered Canadian suppliers remain competitive with foreign suppliers of these services to non-residents. This measure was announced in the press release of November 5, 1991 and applies to supplies all or part of the consideration for which becomes due after that day or is paid after that day without having become due.

Section 20 Service of Dismantling Property to be Exported

The amendment adds section 20 to Part V of Schedule VI, which zero-rates a supply, made to an unregistered non-resident person, of a service of dismantling property for the purpose of exporting the property.

This provision ensures that registered Canadian suppliers are put on a competitive footing with foreign suppliers of these services when competing internationally for this business. For instance, pursuant to this amendment, when unregistered non-residents purchase used plant or equipment in Canada for export, any dismantling service associated with this property will be zero-rated. This measure was announced in the press release of November 5, 1991 and applies to supplies all or part of the consideration for which becomes due after that day or is paid after that day without having become due.

Section 21 Service of Testing or Inspecting Tangible Personal Property

The amendment adds section 21 to Part V of Schedule VI, which zero-rates a supply, made to an unregistered non-resident person, of a service of testing or inspecting tangible personal property that is acquired or imported for the sole purpose of having the service performed and that is to be destroyed or discarded in the course of providing the service or upon completion of the service.

This measure is consequential to the addition of section 19 to Part V of Schedule VI. That provision, which was announced in the press release of November 5, 1991, zero-rates a supply of a service of destroying or discarding goods made to an unregistered non-resident. Both measures apply to supplies all or part of the consideration for which becomes due after November 5, 1991 or is paid after that day without having become due.

This provision complements the revised drop-shipment provisions in subsections 179(2) and (3), which relieve from tax a supply of a commercial service (as defined in subsection 123(1)) made by a registrant to an unregistered non-resident in respect of tangible personal property which is delivered to another registrant or exported. To the extent that goods of an unregistered non-resident are destroyed or discarded in Canada after testing, the testing service in this circumstance would not be covered by the drop-shipment rules in section 179. Therefore, the service is instead zero-rated under new section 21.

Section 22 Telecommunication and Postal Services

The amendment adds section 22 to Part V of Schedule VI, which zero-rates a supply of a telecommunication or postal service made by a registrant who carries on a business of supplying such services to a non-resident who is not a registrant and who also carries on a business of supplying such services.

These supplies are currently zero-rated under existing section 7 of Part V of Schedule VI. This amendment applies to supplies of services the performance of which begins on or after the day the amendment receives Royal Assent.

Section 23 Advisory, Professional or Consulting Services

The amendment adds section 23 to Part V of Schedule VI, which zero-rates certain supplies of advisory, professional or consulting services made to non-resident persons. These types of supplies are currently zero-rated under existing section 7 of that Part. The amendment is consequential to an amendment removing these supplies from that section.

Section 23 also provides that a supply, made to a non-resident, of a service rendered in connection with, and after the commencement of, criminal, civil or administrative litigation in Canada is not considered to be an exported service and, therefore, is subject to tax. Given that litigation conducted in Canada takes place in Canada, it is appropriate that these services are taxed when supplied to non-residents. Moreover, to the extent that non-resident practitioners are not generally permitted to conduct litigation in Canada, this change will not place domestic practitioners at a competitive disadvantage.

The amendment also provides that a supply of an advisory, professional or consulting service in respect of tangible personal property made to a non-resident person is not zero-rated if the property is situated in Canada at the time the service is performed. This change is consistent with the amendment to section 7 of Part V of Schedule VI, adding a similar restriction in that section. This measure removes the uncertainties associated with the application of the existing wording in section 7, which refers to tangible personal property that is ordinarily situated in Canada or that is to be delivered in Canada.

These changes apply to supplies of services the performance of which begins on or after the day the amendment receives Royal Assent.

Section 24 Floating and Mobile Homes

Floating homes and mobile homes are defined, in subsection 123(1), to be real property for GST purposes.

New section 24 of Part V of Schedule VI provides that mobile homes and floating homes are considered to be tangible personal property for the purposes of that Part. This provision ensures that, for instance, the sale of a mobile or floating home is zero-rated if the recipient exports the property from Canada in circumstances described in section 1 of Part V of Schedule VI. Such a supply would not otherwise be zero-rated since that section applies only to supplies of tangible personal property.

This provision is consistent with administrative practice and is effective January 1, 1991.

Clause 184

Definition of "Carrier"

ETA
Schedule VI, Part VII, subsection 1(1)

This amendment repeals the definition "carrier" in subsection 1(1) of Part VII of Schedule VI. The definition "carrier" is added to subsection 123(1) and will therefore apply for purposes of all of Part IX and, in particular, for purposes of the revised drop-shipment rules in section 179.

This change is effective January 1, 1991.

Clause 185

Warehousing and Transportation Services

ETA
Schedule VI, Part VII, Sections 13 and 14

Section 13 Highway Sufferance Warehouses

Pursuant to the March 27, 1991 press release, this amendment zero-rates fees charged by highway sufferance warehouses (referred to for purposes of the *Customs Act* "type B" warehouses) for handling and storage services provided by the warehouses for the purpose of enabling inspection of goods before their release from Customs.

This amendment is effective January 1, 1991.

Section 14 International Ferry Services

This amendment, in conjunction with an amendment to section 1 of Part VIII of Schedule V, zero-rates a service of ferrying by watercraft passengers or property to or from a foreign destination where the principal purpose of the ferrying is to transport motor vehicles and passengers between parts of a road or highway system that are separated by a stretch of water. This is consistent with the tax-free treatment of international passenger and freight transportation services (other than passenger air transportation services to or from the continental U.S. or the Islands of St. Pierre and Miquelon).

Operators of zero-rated ferrying services are entitled to input tax credits in respect of those services. Domestic ferrying services, as described in section 1 of Part VIII of Schedule V, remain exempt and, hence, input tax credits may not be claimed in respect of the supply of such services.

The amendment is consistent with current administrative practice and is effective January 1, 1991.

Clause 186

Non-resident Securities

ETA
Schedule VI, Part IX, Section 1(e)

Section 1 of Part IX of Schedule VI provides for the zero-rating of certain exports of financial services other than certain insurance services. Paragraph (e) of that section currently excludes from the zero-rated supplies a supply of a financial service related to the buying or selling of securities as a principal, other than in the capacity of an underwriter. The amended paragraph (e) excludes a supply of a financial service related to a financial instrument (other than an insurance policy or a precious metal) if the financial instrument is not acquired directly from a non-resident issuer by a financial institution acting as principal.

This amendment was announced in the November 5, 1991 press release and applies to financial services supplied after that date.

Clause 187

Canadian Goods Returned

ETA
Schedule VII, Section 1

Schedule VII lists goods that may be imported into Canada free of GST. Section 1 of the Schedule is amended to delete the references to tariff items 98.13 and 98.14.

Tariff items 98.13 and 98.14 describe goods that originated in Canada or were previously accounted for under the *Customs Act* and are returned to Canada without having been advanced in value or improved in condition. These goods may generally be imported without payment of customs duty. These tariff items include goods that were previously exported and sold outside Canada and goods that were sold in Canada and exported in circumstances that qualified the sale as a zero-rated export. Since GST would not have been payable on these transactions, the inclusion of tariff items 98.13 and 98.14 in section 1 of the Schedule would allow these goods to escape GST altogether. To preclude this, the press release of December 18, 1990 announced restrictions on the circumstances in which goods classified under these tariff items could be imported on a non-taxable basis.

The circumstances in which goods classified under tariff items 98.13 and 98.14 may be imported free of GST will be prescribed by regulations made under section 8 of Schedule VII and will be effective from January 1, 1991.

Generally, the regulations under section 8 will provide for the tax-free importation of goods classified under these tariff items where the owner or importer previously acquired the goods in Canada or imported them for consumption, use or supply in Canada. However, as announced in the December 18, 1990 press release, tax-free importation will not be allowed for goods that are being imported for the first time after having been

- supplied outside Canada;
- supplied in Canada for export under conditions resulting in zero-rating of the supply under Part V of Schedule VI; or
- supplied to a non-resident recipient who was entitled to claim a rebate of the GST paid on the goods under subsection 252(1).

Further, where GST was previously paid on only a fraction of the value of the goods pursuant to the *Value of Imported Goods (GST) Regulations* (other than section 8 or 12), the goods will not qualify for relief under the new regulations.

Nevertheless, tax-free importation will be allowed for goods that are returned to the Canadian supplier because the sale was cancelled or the goods are defective or not as ordered. Tax-free importation will also be allowed for goods that were exported by a vendor for sale and are being returned to Canada, without having been sold, to the person who sold the goods to the vendor.

Goods on which a refund or drawback of customs duties has been given may not be classified under tariff items 98.13 and 98.14 unless the refund or drawback has been repaid to the Receiver General. This factor is not relevant for determining whether GST relief should be allowed. Therefore, the rules to be prescribed under section 8 of the Schedule will also apply to goods that would have been classified under tariff item 98.13 or 98.14 but for the fact that a refund or drawback of customs duties was given on the goods.

The press release of December 18, 1990 also announced special relief from GST for containers described in a container bank authorized by Revenue Canada, Customs. Rules for these containers are dealt with under new section 9 of Schedule VII.

Clause 188

Non-Taxable Importation of Prescribed Property

ETA
Schedule VII, Section 7.1

Under section 7 of Schedule VII, publications prescribed under existing subsection 143(2) may be imported on a non-taxable basis if the publications are sent by mail or courier to a recipient in Canada by a registered non-resident and are valued at $40 or less. This recognizes that, under that subsection, the supply to the recipient is treated as having been made in Canada and the non-resident is required to collect tax under Division II on the publications. Section 143 is being amended to remove the $40 threshold so that registered non-resident suppliers of publications sent by mail or courier to Canada will, regardless of the value of those publication, be required to collect Division II tax on the publication. The addition of new section 7.1 to Schedule VII is consequential to that change, ensuring that tax under Division III does not also apply to the publication in these cases.

This amendment applies to goods imported after 1992.

Clause 189

Non-Taxable Importations

ETA
Schedule VII, Sections 8, 9 and 10

Section 8 Prescribed Goods

The prescribing authority under section 8 of Schedule VII is amended, effective January 1, 1991, to allow the Minister of National Revenue to prescribe terms and conditions (e.g., the posting of security) under which prescribed goods may be imported on a non-taxable basis.

Section 9 Imported Containers

The addition of new section 9 to Schedule VII is consequential to the deletion of the reference to tariff items 98.13 and 98.14 in section 1 of the Schedule. Under the latter section, where a person exports containers and subsequently imports a similar quantity of like containers, the importation is free of customs duties and GST. This relief is continued under new section 9 of Schedule VII which applies as of January 1, 1991.

Section 10 Imported Financial Instruments and Money

This section is being added, for greater certainty, to confirm that such things as stock certificates, bond certificates, promissory notes and money are not taxable under Division III when brought into Canada. This amendment applies as of January 1, 1991.

Clause 190

Net Tax Calculation and Remittance

ETA
225(1) to (3), 228(1) to (3), 229(1) to (3)

These subsections deal with the calculation and remittance of net tax by registrants and the payment of net tax refunds to registrants.

The amendment, as set out in Schedule I to the draft legislation, substitutes the word "person" for the word "registrant" in these subsections, which results in the amalgamation of the rules for registrants and non-registrants. This also clarifies that the Minister of National Revenue may pay net tax refunds to non-registrants where their net tax is a negative amount.

These changes are effective January 1, 1991.

Clause 191

Places of Residence or Lodging

ETA
Definitions "habitation" and "logement provisoire" in 123(1); 190(1)(b); 191(7)(a); and 254(2)(g)(ii)

These amendments to the French version of the Act replace references to "de pension" with references to "d'hébergement" which is more consistent with the term "lodging" used in the English version of these provisions.

This amendment is effective January 1, 1991.

Clause 192

Transitional Provision - Damage Appraisals by Professionals

The press release of March 27, 1991 announced a proposal to exempt the provision of damage appraisal services supplied to insurers and adjusters by including these services in the definition of a "financial service". However, the announcement omitted a reference to a general exclusion that currently applies to all services that would otherwise qualify as financial services – namely, the exclusion for the professional services of an accountant, actuary, lawyer or notary. This general exclusion will apply to damage appraisal services as well. However, in the event that such a professional supplied a damage appraisal service on or before ANNOUNCEMENT date, clause 192 provides that tax is not payable on the supply. If the professional has already collected an amount as tax on the service, that amount must be remitted. However, the supplier in this case may make an adjustment under section 232 and refund the amount to the client or the client may apply for a refund under section 261 of the Act. Since the supplier is not treated as having made an exempt supply, the supplier may claim input tax credits in the normal manner. However, in the case where the professional did not charge or collect an amount as tax on the service, clause 192 deems the supply to have been an exempt supply and the supplier would not be eligible for input tax credits in respect of inputs used exclusively in making that supply.

Clause 193

Transitional Provision - Interest and Penalties Resulting from Deemed Election

New subsection 150(7) deems members of a mutual insurance group to have made an election under section 150 which results in certain supplies between the members being treated as exempt supplies. This also results in a denial of input tax credits to the extent that property or services were acquired or imported by the members for consumption, use or supply in the course of making those exempt supplies. Since this treatment was not announced until November 5, 1991, the members may have already claimed those input tax credits. The amounts claimed are therefore required to be repaid. Clause 193, however, allows the Minister of National Revenue to waive or cancel any interest or penalty on any resulting increase in net tax owing as a result of denying the input tax credits for reporting periods ending before November 5, 1991.

Clause 194

Transitional Provision - Related Corporations

Section 186, in effect, enables a parent corporation to claim input tax credits for property or services acquired or imported for consumption or use in relation to the capital stock or indebtedness of a related corporation. However, the existing rules of the Act result in a deferral of the deduction of these credits until the end of the parent's fiscal year. Amendments to section 186 would result in the normal timing rules for claiming input tax credits applying in relation to property or services referred to in that section. However, clause 194 ensures that the existing rules in section 186 continue to apply in respect of fiscal years ending on or before ANNOUNCEMENT DATE. For fiscal years ending after that date, the credits to which registrants are entitled by virtue of section 186 as of ANNOUNCEMENT DATE may be claimed in the return for the first reporting period ending after that day.

Clause 195

Transitional Provision - Revocation of Election for Quick Method

Subsection 227(4) of the Act prohibits a registrant from revoking an election to use a streamlined method of accounting (as set out in regulations made under section 227) earlier than one year after the election became effective. However, this restriction could be onerous for registrants who elected, as of January 1, 1991, to use the "Quick Method" form of streamlined accounting under which their GST remittances are based on a rate determined at the beginning of each fiscal year with reference to their sales mix in their preceding fiscal year. If that preceding year was not a calendar year – for example, if it ended March 31, 1990 – the remittance rate applicable at the time of an election on January 1, 1991 would be based on 1989-90 fiscal year data and a new remittance rate would be determined in 1991. If the sales mix of a registrant in this circumstance had changed significantly in the 1990-91 fiscal year, as compared to the 1989-90 fiscal year, such that the registrant's remittance rate increased, it would be onerous to hold the registrant to the higher rate for the rest of 1991. Clause 195 therefore permits a revocation of a Quick Method election to be filed with the return for the last reporting period in the 1990-91 fiscal year of a registrant.

Clause 196

Transitional Provision - Information Requirements Regarding Transitional Instalment Base

Clause 196 gives the Minister of National Revenue the authority to require registrants filing annual returns to provide the Minister with information regarding their instalment base for a fiscal year straddling the start-up of the GST.

This requirement was announced in the press release of March 27, 1991. While the press release indicated that the amendment would be effective from the date of implementation of the tax, in order that the amendment not apply retroactively to registrants who have not complied with these requirements to date, the amendment will be effective 90 days after the amendment receives Royal Assent – i.e., persons will be required, within 90 days after the legislation implementing this measure receives Royal Assent, to provide the required information to the Minister in prescribed manner.

Clause 197

Transitional Provision - Retroactive Coming Into Force

This transitional provision ensures that the rules relating to the application of GST to supplies made after its implementation on January 1, 1991 and to transactions that straddled the start-up of the tax apply in the same manner to any provision of Part IX that is added or amended as of December 17, 1990 (i.e., the date the legislation implementing the GST was enacted) as they apply to provisions that were contained in Part IX as enacted on that day.

Part II: Access to Information Act

Clause 198

Section 24 of the *Access to Information Act* provides that records of information requested under that Act shall not be disclosed if the disclosure is restricted by a provision set out in Schedule II to that Act. This clause adds to that Schedule a reference to section 295 of the *Excise Tax Act*. As a result, personal information collected by officials in the administration or enforcement of the GST will not be available for disclosure on an access to information request. This amendment applies as of January 1, 1991.

Part III: Canada Pension Plan

Clause 199

Communication of Decision or Determination

CPP
28(1.1)

After a determination by, or a decision on an appeal to, the Minister of National Revenue under section 27 of the *Canada Pension Plan* has been communicated to an employee or an employer, subsection 28(1) of that Act allows the employee, employer or their representative ninety days to appeal from the determination or decision. New subsection 28(1.1), applicable upon Royal Assent, provides that, in determining the time at which the decision is communicated (and, hence, the ninety-day period) the rules of the Tax Court of Canada, prescribed under new paragraph 20(1.1)(*h*.1) of the *Tax Court of Canada Act*, must be followed. (See commentary on new paragraph 20(1.1)(*h*.1) of that Act and subsection 70(1.1) of the *Unemployment Insurance Act*).

Part IV: Customs Act

Clause 200

Definition "duties"

CA
2(1)

The definition "duties" in subsection 2(1) of the *Customs Act* is amended to include a reference to subsection 3(1) and to delete references to paragraphs 32(6)(b) and 85(1)(b) of that Act. The effect of adding the reference to subsection 3(1) is to ensure that the *GST* does not apply to a province as an importer. The effect of deleting the reference to paragraphs 32(6)(b) and 85(1)(b) will be that in those paragraphs "duties" will include the GST. Thus in order for imported goods to be released from Customs without any requirement of accounting, pursuant to regulations made under paragraph 32(6)(b), the goods must be imported free of both customs duties and GST. In regulations made under paragraph 85(1)(b) of the Customs Act, the Governor in Council may prescribe the portion that may be granted as a drawback of both customs duties and GST on imported goods that are re-exported or wrought into, or consumed in the processing of, goods for export.

Part V: Federal Court Act

Clause 201

Appeals from Tax Court of Canada

FCA
27(1.1)

Subsection 27(1.1) of the *Federal Court Act* provides that the Federal Court has jurisdiction to hear appeals from judgments of the Tax Court of Canada, except where the judgment under appeal was governed by the informal procedure under section 18 (appeal under the *Income Tax Act*), 18.29 (appeal under Part I of the *Canada Pension Plan*, Part III of the *Unemployment Insurance Act*, the *Old Age Security Act*, the *War Veterans Allowance Act* or Part XI of the *Civilian War Pensions and Allowances Act*) or 18.3 of the *Tax Court of Canada Act* (appeal under the *Petroleum and Gas Revenue Tax Act*).

Subsection 27(1.1) of the *Federal Court Act* is amended, upon Royal Assent, to clarify that no right of appeal rests with the Federal Court in respect of a judgment of the Tax Court where the hearing was governed by the informal procedure under section 18.3001 of the *Tax Court of Canada Act*.

Part VI: Income Tax Act

Clause 202

Copy of Decision

ITA
171(4)

Subsection 171(4) of the *Income Tax Act* provides that a copy of the judgment of the Tax Court of Canada on an appeal, and any written reasons given therefor, is sent by registered mail to the appellant and the Minister of National Revenue. This provision is, upon Royal Assent, repealed since those requirements are now found under subsection 18.22(3) of the *Tax Court of Canada Act*. (See commentary on that provision and subsection 309(2) of the *Excise Tax Act*).

Part VII: Tax Court of Canada Act

Clause 203

Extension of Time

TCC
12(4)

Subsection 12(4) of the *Tax Court of Canada Act* provides that the Tax Court has exclusive jurisdiction to determine a request for an extension of time to object or appeal pursuant to section 167 of the *Income Tax Act*. The provisions of that Act governing applications for extensions of time for objecting to, or appealing assessments of tax, have been amended by chapter 49 of the Statutes of Canada, 1991 to parallel sections 304 and 305 of the *Excise Tax Act*.

New section 166.2 of the *Income Tax Act*, which mirrors section 304 of the *Excise Tax Act*, allows a taxpayer to apply to the Tax Court for an extension of time to object to an assessment or make a request under subsection 245(6) of the *Income Tax Act* (the general anti-avoidance rule) where a prior application to the same effect to the Minister of National Revenue was rejected or unanswered for more than ninety days. Section 167 of the *Income*

Tax Act, which mirrors section 305 of the *Excise Tax Act*, still provides for the right to apply for an extension of time to appeal.

As a consequence of these changes, subsection 12(4) of the *Tax Court of Canada Act* is amended, upon Royal Assent, to add a reference to section 166.2 of the *Income Tax Act*.

Clause 204

Examinations for Discovery

TCC
17.3(1)

Subsection 17.3(1) of the *Tax Court of Canada Act* limits the use of the procedure of oral examination in an appeal under the *Income Tax Act* where the aggregate of all amounts in issue or the amount of loss under subsection 152(1.1) of that Act that is in issue in the appeal does not exceed the applicable threshold amount. Examinations for discovery can, however, be held despite that limitation where the parties consent thereto or the Tax Court of Canada makes an order to that effect upon application by one party. Currently, the threshold amounts applicable to the aggregate of all amounts in issue and the amount of loss are $15,000 and $30,000 respectively. The amendment to subsection 17.3(1), applicable with respect to appeals for which a notice of appeal has been filed after the day this amendment receives Royal Assent, increases the threshold amounts to $25,000 and $50,000 respectively.

Clause 205

Court Order to Apply General Procedure

TCC
18.11(2)

Subsection 18.11(2) of the *Tax Court of Canada Act* provides that the Tax Court shall grant an application of the Attorney General to apply the general procedure to an appeal where certain conditions are met. One of the conditions, under subparagraph 18.11(2)(*a*)(ii), is that the outcome of the appeal is likely to affect, among other things, any other assessment of the appellant. Another condition, under subparagraph 18.11(2)(*b*)(iii), is that the aggregate of certain amounts exceed $7,000; one of those amounts being the amount likely to be affected in the other assessment referred to in subparagraph (*a*)(ii).

The amendment to subparagraphs 18.11(2)(*a*)(ii) and (*b*)(iii) of the *Tax Court of Canada Act*, applicable upon Royal Assent, provides that, in deciding to grant an application of the Attorney General to apply the general procedure, the Tax Court must also take proposed assessments into account. A reference to "proposed assessment" is currently found in subsections 173(1) and 174(1) and (3) of the *Income Tax Act*. These provisions provide that the Minister of National Revenue may refer questions of law, fact or law and fact to the Tax Court.

This amendment brings the provisions applicable in respect of appeals under the *Income Tax Act* in line with those in respect of appeals under Part IX of the *Excise Tax Act* since, for the purpose of computing the amount in dispute in a GST appeal, subsection 2.2(2) of the *Tax Court of Canada Act* takes proposed assessments into account.

Clause 206

Time Limit for Reply to Notice of Appeal

TCC
18.16

Subsections 18.16(1) and (3) of the *Tax Court of Canada Act* prescribe the time limit within which the Minister of National Revenue shall file a reply to a notice of appeal. Where the Minister fails to file the reply on time, subsection 18.16(4) of the Act provides that the allegations of fact contained in the notice of appeal are presumed to be true for the purpose of the appeal.

The amendments to subsections 18.16(1) and (3), applicable upon Royal Assent, extend the time period to file the reply from forty-five days to sixty days and, where the Tax Court dismisses an application made by the Attorney General to have the general procedure applied to an appeal that would otherwise be governed by the informal procedure, from forty-five days to sixty days or from twenty days to thirty days, as the case may be. The extension from 45 to 60 days brings the time for filing the reply into line with the GST provisions in section 18.3003 of the *Tax Court of Canada Act*.

Subsections 18.16(1) and (3) are also amended, applicable upon Royal Assent, to clarify that the appellant may consent to an extension of time for the filing of a reply by the Minister, either before or after the time period for replying that would otherwise apply has elapsed.

Finally, a consequential amendment is made to subsection 18.16(4), applicable upon Royal Assent. The amendment clarifies that the presumption regarding the reversal of the burden of proof in respect of the allegations of fact contained in the notice of appeal applies only where the Minister does not file the reply to a notice of appeal within the prescribed time or within the time consented to by the appellant or granted by the Tax Court.

Clause 207

Time for Hearing

TCC
18.17(1)

Subsection 18.17(1) of the *Tax Court of Canada Act* provides that, other than in exceptional circumstances, the Tax Court shall fix a date for the hearing of an appeal made under the *Income Tax Act* and governed by the informal procedure that is no later than ninety days after the day by which the Minister of National Revenue must file a reply to the notice of appeal pursuant to subsection 18.16(1) or (3) of the *Tax Court of Canada Act*.

The amendment to subsection 18.17(1), applicable upon Royal Assent, extends the length of that period of time from ninety days to one hundred and eighty days or, where the Tax Court believes that it would not be practicable to do so, to three hundred and sixty-five days. This change brings the time for the hearing of income tax appeals into line with the time for the hearing of GST appeals. New subsection 18.17(1.1) provides that the Tax Court may, in exceptional circumstances, fix a date for the hearing of the appeal that is beyond the time limit set out in subsection 18.17(1).

Clause 208

Time for Judgment and Copy of Decision

TCC
18.22(1) and (3)

Subsection 18.22(1) of the *Tax Court of Canada Act* provides that, other than in exceptional circumstances, the Tax Court shall render judgment on an appeal governed by the informal procedure no later than sixty days after the day on which the hearing is concluded. The amendment to subsection 18.22(1), applicable upon Royal Assent, extends the length of that period from sixty days to ninety days. This change brings the time for the judgment of income tax appeals into line with the time for judgment of GST appeals.

Subsection 18.22(3) of the said Act provides that a copy of the Tax Court's judgment on an appeal, and any written reasons given therefor, shall be sent to each party to the appeal. The amendment, applicable upon Royal Assent, provides that the copies shall be sent by registered mail and that a copy must also be sent to the Minister of National Revenue (see commentary on subsections 309(2) of the *Excise Tax Act* and 171(4) of the *Income Tax Act*).

Clause 209

Extensions of Time

TCC
18.29(1) and (3)

Subsection 18.29(1) of the *Tax Court of Canada Act* provides for a modified informal procedure under which certain provisions of the informal procedure applicable to appeals under the *Income Tax Act* also apply to other legislation such as Part I of the *Canada Pension Plan*, Part III of the *Unemployment Insurance Act* and the *Old Age Security Act*. Subsection 18.29(1) is amended, applicable upon Royal Assent, to add to the list of those provisions paragraph 18.18(1)(*a*) which excludes from the computation of time limits under section 18.16 (reply to notice of appeal), 18.17 (time for hearing) and 18.22 (time for judgment) the period beginning on December 21 of any particular year and ending on January 7 of the following year.

Paragraph 18.29(1)(*b*) of the *Tax Court of Canada Act* is amended, applicable upon Royal Assent, to add Part VII of the *Unemployment Insurance Act* to the list of legislation to which some provisions of the informal procedure are applicable. Part VII of that Act provides for the so-called "clawback" of insurance benefits pursuant to which a claimant of unemployment benefits is liable to pay to the Receiver General a certain amount of money where the income of the claimant for a taxation year exceeds an amount that is one and one-half times the maximum yearly insurable earnings.

Subsection 18.29(3) of the *Tax Court of Canada Act* provides that the provisions referred to in 18.29(1) also apply to the determination of a request for an extension of time to object or appeal pursuant to section 167 of the *Income Tax Act*. (See the commentary on the amendment to subsection 12(4) of the *Tax Court of Canada Act* for an explanation of the extent to which the provisions of the *Income Tax Act* governing applications for extensions of time have been amended by chapter 49 of the Statutes of Canada, 1991, to parallel sections 304 and 305 of the *Excise Tax Act*.) As a consequence of those changes, subsection 18.29(3) is amended, upon Royal Assent, to add a reference to section 166.2 of the *Income Tax Act*.

Clause 210

Time Limit for Reply to Notice of Appeal

TCC
18.3003

Subsection 18.3003(1) of the *Tax Court of Canada Act* provides that the Minister of National Revenue has sixty days to reply to a notice of appeal filed under the informal procedure in respect of a GST issue. However, the Tax Court may allow for the filing of the reply after the sixty-day period has elapsed where the Minister makes an application to that effect before or after the time period for replying that would otherwise apply has elapsed. The amendment to subsection 18.3003(1), applicable upon Royal Assent, clarifies that the person who has brought the appeal may consent, either before or after the expiry of the sixty-day period, to the filing of the reply after that period.

A consequential amendment to subsection 18.3003(2), applicable upon Royal Assent, clarifies that the presumption regarding the reversal of the burden of proof in respect of the allegations of fact contained in the notice of appeal only applies where the Minister does not file the reply to the notice of appeal within the prescribed time or within the time consented to by the appellant or granted by the Tax Court.

Clause 211

Time for Hearing

TCC
18.3005

Section 18.3005 of the *Tax Court of Canada Act* provides that the Tax Court shall fix a date for the hearing of an appeal under Part IX of the *Excise Tax Act* and to which the informal procedure applies. That date shall be no later than one hundred and eighty days after the last day the Minister has to file the reply to the notice of appeal under subsection 18.3003(1). Section 18.3005 is renumbered as subsection 18.3005(1) and amended, upon Royal Assent, to provide that the Tax Court may, where it believes that it would be impracticable to fix a date within that period of time, fix a date for the hearing of an appeal within three hundred and sixty-five days after that last day. New subsection 18.3005(2) provides that the Tax Court may, in exceptional circumstances, fix a date for the hearing of the appeal that is subsequent to the delay referred to in subsection 18.17(1).

Time for Judgment

TCC
18.3006

Section 18.3006 of the *Tax Court of Canada Act* provides that the Tax Court must render judgment on an appeal made under Part IX of the *Excise Tax Act* no later than ninety days after the day on which the hearing of the appeal is concluded. With the change to subsection 18.22(1), the same time limit is now provided in respect of judgments of appeals made under the *Income Tax Act* (see commentary on subsection 18.22(1)). It is, therefore, possible to repeal, upon Royal Assent, section 18.3006 and to have subsection 18.22(1) apply, with such modifications as the circumstances require, to appeals made under Part IX of the *Excise Tax Act*. This is achieved by adding a reference to subsection 18.22(1) in section 18.302. That section lists a series of provisions that apply to appeals made under the *Income Tax Act* and, with such modifications as the circumstances require, to appeals made under Part IX of the *Excise Tax Act* (see commentary on section 18.302).

Clause 212

Interest Accruing

TCC
18.301 and 18.302

Section 18.301 of the *Tax Court of Canada Act* is renumbered as section 18.302 in respect of the provisions governing the informal procedure applicable to appeals under the *Income Tax Act* that are also applicable to the informal procedure for appeals under Part IX of the *Excise Tax Act*.

Section 18.301 provides that a number of provisions of the informal procedure that apply to appeals under the *Income Tax Act* also apply to appeals under Part IX of the *Excise Tax Act*. Section 18.302 is amended, upon Royal Assent, to make subsection 18.22(1) applicable to the informal procedure in respect of appeals under Part IX of the *Excise Tax Act*, with such modifications as the circumstances require. (See commentary on the repeal of section 18.3006 of the *Tax Court of Canada Act*).

New section 18.301, applicable upon Royal Assent, provides that the determination of the amount in dispute (within the meaning assigned by subsection 2.2(2) of the *Tax Court of Canada Act*) in an appeal under Part IX of the *Excise Tax Act* is made without accounting for interest accrued after the date of the notice of assessment that is the subject matter of the appeal.

Clause 213

Rules

TCC
20(1.1)(*h*.1) and (*j*)

Subsection 20(1) of the *Tax Court of Canada Act* provides that the rules committee of the Tax Court shall make rules that regulate the pleadings, practice and procedure in the Tax Court. Subsection 20(1.1) enumerates a non-exhaustive list of subject matters for which the rules committee may make rules.

New paragraph 20(1.1)(*h*.1) provides that rules can be made to determine the day on which a decision on an appeal to, or a determination by, the Minister of National Revenue under section 27 of the *Canada Pension Plan* or section 61 of the *Unemployment Insurance Act* has been communicated to a person. Pursuant to those two Acts a person has ninety days to appeal a decision or a determination. This ninety-day period begins after the day of communication of the decision or determination. (See commentary on subsection 28(1.1) of the *Canada Pension Plan* and 70(1.1) of the *Unemployment Insurance Act*).

Paragraph 20(1.1)(*j*) of the *Tax Court of Canada Act* is amended, applicable upon Royal Assent, to parallel the existing wording used in paragraph 46(1)(*g*) of the *Federal Court Act*, which deals with costs that can be awarded by the Federal Court. The amendment also authorizes the Tax Court to make rules for denying costs to any person who has brought an appeal where that person had the right to elect under subsection 18(1) of that Act to have the informal procedure apply to the appeal but did not so elect so that the general procedure applied to the appeal.

Part VIII: Unemployment Insurance Act

Clause 214

Communication of Determination or Decision

UI
70(1.1)

Once a determination by, or a decision on an appeal to, the Minister of National Revenue under section 61 of the *Unemployment Insurance Act* has been communicated to the Canada Employment and Immigration Commission or to a person affected by the determination or decision, subsection 70(1) of that Act allows the Commission or person ninety days to appeal from the determination or decision. New subsection 70(1.1) of that Act, applicable upon Royal Assent, provides that, in determining the ninety-day period to appeal, the rules that the rules committee of the Tax Court of Canada is authorized to establish under paragraph 20(1.1)(*h*.1) of the *Tax Court of Canada Act* must be followed. (See commentary on paragraph 20(1.1)(*h*.1) of that Act and subsection 28(1.1) of the *Canada Pension Plan*.)

Part IX: Act Implementing the GST

Clause 215

Subclause 12(2) of the Act which implemented the GST is the coming into force provision for Part IX of the *Excise Tax Act* - under which the GST is imposed.

New subparagraphs 12(2)(a)(vi) and (vii) clarify the coming into force of the GST with respect to leases of real property. This amendment clarifies that, subject to the transitional provisions in Division IX of the *Excise Tax Act*, GST applies to lease payments that become due after 1990.

This amendment is effective as of January 1, 1991.